

(1992) 04 CAL CK 0012

In the Calcutta High Court

Case No : C.O. No's. 14097 (W) of 1988 and 13053 (W) of 1989

Samir Bhattacharya and Others

APPELLANT

Vs

The State of West Bengal and Others
 Bijoy Mandal
and Others Vs The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-04-1992

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 38, 39

Citation : (1992) 2 CALLT 333

Hon'ble Judges : Khwaja Mohammad Yusuf, J

Bench : Single Bench

Advocate : D.K. Kundu and Ekramul Bari, for the Appellant; S.M. Sanyal and P.S. Basu for Respondent Nos. 2, 3, 7, 8 and 9 in C.O. No. 13053(W)/1989, R.K. Mukherjee, in C.O. No. 13054(W)/1989 and S.K. Roy, Abdul Hadi and Saidur Rahaman, in C.O. Nos. 13053(W)/1989 and 13055(W)/1989, for the Respondent

Final Decision : Allowed

Judgement

Khwaja Mohammad Yusuf, J.—All the four writ petitions were heard analogously and are disposed of by this Judgment.

2. The writ petitioners joined the West Bengal Home Guard, Border Wing Home Guard, from time to time since 1978 and thereafter. The petitioners are divided into four categories of the Border Wing Home Guard, namely, Constable, Havildar, Nayek and Lance Nayek and after undergoing a training of 75 days or so they were given Certificates. Some of the petitioners are rendering services for more than 10 years, some 12-13 years, 8 and 7 years and the like, uninterruptedly or without any break. They were appointed under West Bengal Ordinance No. XI of 1962 which subsequently merged into the West Bengal Home Guards Act, 1962 with effect from 14th December, 1962. In the appointment/enrolment certificate the following is noted : "While on duty will have the same powers, functions and privileges as a Police Officer appointed under Act V of 1861." This Act V of 1861 is the Police Act, 1861 and Section 8

thereof says :

"Every police officer appointed to the police force than an officer mentioned in Section 4 shall receive on his appointment a certificate in the form annexed to this Act under the seal of the Inspector-General or such other officer as Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police officer."

3. The case of the petitioners is that they were given the duty and responsibility under the Police Act but no privileges and powers were given to them at all. Their contention is that the petitioners have been rendering services at the Indo-Bangladesh Border 24-hour a day because they have no duty hours. They are in uniform for 12 out of 24 hours, they have got no casual or medical leave nor Puja or other festival leaves. They have no resting day on Sunday or have any holiday as well as no scale of "pay, no travelling allowances, no Provident Fund or gratuity; and above all no fixed length of service nor pension or retiring benefits. There is no messing system and they take meals at the Border Security Force messes on individual payment. Though the Border Security Forces got border allowances but the petitioners are deprived of the same and only get the house rent allowance. Their further grievance is that as members of the Border Wing Home Guard they get only two trousers and two pairs of shoes in a year but no woollen clothing during winter and had to pass sleepless nights during winter season whereas the Border Security Forces get woollen clothing, woollen bags, woollen shirts, mosquito nets, etc. The petitioners are to render the same services as the Border Security Forces and Constables are required to work in the face of this mental torture and discrimination. If any Border Wing Home Guard dies in harness there is no rule of compensation to his wife or legal heirs as well as no Provident Fund, no gratuity, no pension or the like. The service is terminable at the sweet will of the Superior Authority and there is no guideline which governs the conditions of service of the petitioners. It is stated that the petitioners have already spent a valuable portion of their life in the service but they may be removed at any moment as they have no security. The contention of the petitioners is that the Border Wing Home Guard is a part and parcel of the Government of West Bengal and should be subject to the conditions of public law limitation as any governmental organisation. They are entitled to get the protection of Article 14 of the Constitution and must be protected from arbitrary and discriminatory action. The petitioners made representations one after another to all the high-ups in the administration but none of the authorities looked to their grievances. The petitioners" claim to have the protection of the Notification dated 25th June, 1979 issued by the Finance Department, Audit Branch, Government of West Bengal. It is contended that under Article 42 of the Constitution it is a duty of the State to make provisions of its employees of just and human condition but this is denied to them ; even the provision of Article 39 providing men and women equal right to an adequate means of livelihood is denied. Most pathetically the petitioners have submitted that unequal treatment

has got no parallel in democratic country such as meted out to the petitioners and they have become victims of utter negligence on the part of the Government of West Bengal. It is further contended that the Home Guards are holders of civil posts within the meaning of Article 311 of the Constitution and cannot be excluded from the enjoyment of service benefits by discrimination based on no rational principles. The petitioners have come out with a very modest prayer of relief commanding the respondents to provide the petitioners with all benefits of Government servants including fixation of pay, benefits of Provident Fund, gratuity and retirement benefits as well as the privileges of leave and all sorts of Government allowances and further granting the usual increment etc. and also to allow them different allowances as well as usual clothings as given to the Constables of Border Security Force during the continuance of their services and the permanency of their services.

4. In a Supplementary Affidavit affirmed on 2nd July, 1991, on the direction of the Court the petitioners have given in paragraphs 5 and 6 the amount they are getting per month break-wise which indicates that the total emoluments includes Basic Pay, Special Pay, Ration Allowance, D.A., House Rent Allowance and Medical Allowance comes to Rs. 1,716/- in total; save and except as stated hereinbefore they are denied all other benefits and are treated "as non-regular" contrary to Article 14 of the Constitution.

5. The Deputy Inspector-General, Border Security Force, Sector Headquarters, Krishnagar, has filed Affidavit-in-Opposition on behalf of respondents Nos. 2, 3 and 7. The defence is of general nature and does not touch all the points raised by the petitioners. It is stated that the services of Border Wing Home Guard (BWHG) personnel are placed at the disposal of Coy. Commander of different Border Out-Posts and the said personnel performed the duties along with B.S.F. Jawans. It is stated that the BWHG personnel are never entrusted with the duties performing the Border Patrolling/OutPost duties independently. It is stated, inter alia, that they were appointed by the West Bengal Police Authority and not Border Security Force Authority. The defence put forward by the aforesaid respondents are of no use in deciding the points raised by the petitioners. Again, there is a short Affidavit filed on behalf of respondent No. 2, the Union of India. I think the defence was filed in a haphazard way without ascertaining who should say what. Here one Bupendra Chandra Chaturbedi, Additional Deputy Inspector-General, Border Security Force, Headquarters South Bengal Frontier, has affirmed the Affidavit stating that the Home Guards have been requisitioned on a purely stop-gap working arrangement with the respective State Governments on general condition of returning those Home Guards personnel to their respective State Governments after every three months unless special circumstances arise when they might be retained beyond that period. It is admitted frankly that the writ petitioners' repatriation are long overdue and they could not be returned to their respective State Governments. This Affidavit does not throw much light, on the dispute raised by the petitioners but an Annexure with the said Affidavit-in-Opposition marked as secret/immediate on the deployment of Home Guards for

checking influx of Bangladesh nationals along with B.S.F. during 1976-77 dated 29th April, 1976 written by the Deputy Secretary of Government of India, Ministry of Home Affairs to the Director-General, Border Security Forces, New Delhi, indicates in paragraph 2 thereof that the expenditure incurred on the deployment of Home Guards would be debitable to the Major Head 255-Police-A.2-Border Security Force- A.2(I)-Directorate General of Border Security Force-A.2(I) (19) other charges under Demand No. 52-Police during the year 1976-77, subject to funds being voted by Parliament. There is instance that the Centre released its share to the State of West Bengal which shall be dealt with afterwards.

6. There is yet another Affidavit by the Union of India and respondents Nos. 3, 5 and 6 as well as 7, 8 and 9 which make the position somewhat clear. This Affidavit affirmed on 14th June, 1990 by the Deputy Inspector- General, Border Security Force, Sector Headquarters Malda, Mr. Avtar Singh Bedi, appears to be the substantial affidavit which states that the writ petitioners were appointed by the State of West Bengal and accordingly their service conditions are governed by the rules framed by the State of West Bengal having no nexus and/or concern with the answering respondents. It is further stated that the writ petitioners who joined West Bengal Home Guard service do not come under the purview of the Border Security Force Act and Rules and their grievances are matters concerning the State Government alone. It is further stated that the Border Wing Home Guard (BWHG) personnel attached with the B.S.F. personnel are only under the operational command of the B.S.F. authorities when deployed on duty along with IndoBangladesh border. It is further stated that the pay and allowances and other benefits are to be determined by the State Government and the admissible benefits of the B.S.F. cannot apply to the petitioners. It is admitted that the petitioners are allowed common messing with B.S.F. personnel on cash system to avoid their hardship. The Affidavit most categorically states that the answering respondents are having no responsibility or obligation in matters of payment of ex gratia in case of death or accident and other allowances or payments like Provident Fund, Gratuity, Pension, etc. to the writ petitioners. There is no responsibility on their part regarding service condition or safety, security and tenure of service and other grievances of the petitioners as contained in the writ petition. It is stated that the Union of India and these defendants are merely formal parties and actually the writ petition must be directed against the State authorities. This Affidavit-in-Opposition frankly denied any responsibility vis-a-vis the grievances of the petitioners.

7. The most important is the Affidavit-in-Opposition of the State of West Bengal affirmed by the Superintendent of Police of Malda. It is stated that no appointment or enrolment certificate is issued to the Border Wing Home Guard. The significant point made out in this Affidavit is that the writ petitioners have to perform their duties in Indo-Bangladesh border to assist B.S.F. personnel and the condition of their service is casual and not regular and as such they are not entitled to get any leave with pay. It is further stated that they are appointed on

"No Work No Pay" basis. The State have nothing to do about service conditions of BWHG boys and the Notification relating to regular Government employees never covers the Home Guards. The Court feels that the Affidavit filed by the Superintendent of Police of Malda is a most undesirable piece of paper which the State Government has so very boldly filed in its defence contrary to all norms and principles of natural justice.

8. The petitioners in all the four writ applications are members of the Border Wing Home Guards who joined the service of West Bengal Home Guard from time to time since 1978 and thereafter. Their plight is not only pathetic but worse if viewed from the angle of the principles of natural justice and fair play. They are virtually serving the State as bonded labourers. Their long service is not in dispute either by the Union of India or the State of West Bengal. It must be said in all fairness that the State Government utilised their services uninterruptedly for a long period without giving them their legitimate dues in a highly civilised society. They did not enjoy any permanency of service nor have earned any increment of salary though they have been drawing the minimum rate in the pay scale of a Constable of S.A.P. Battalion for years together. They are forced to work by the Government on "no work no pay" basis and they have no leave of any kind as condition of service. These unfortunate people do not get any T.A. or Transfer T.A. like Border Security Force Jawans nor they have the scope of promotion beyond the ranks of Lance Nayek and Havildar. They are not entitled to get any retirement benefit, leave facilities, pension facilities, rather they have no right to exist as a human being in the Government service.

9. It is strange that the State of West Bengal in its Affidavit-in-Opposition did not make any categorical statement as to who is the employer of the writ petitioners but the Inspector-General of Border Security Force in his Affidavit-in-Opposition categorically stated that the writ petitioners were appointed by the State of West Bengal and accordingly their service conditions are governed by the Rules and Regulations framed by the State of West Bengal having no nexus and/or concerned with the answering respondents (i.e. the Border Security Force). In this connection reference may be made of a Memo No. 6913-HCD/HG-48/78 dated 9th November, 1978 issued by the Deputy Director of Civil Defence and the Deputy Secretary to the Government of West Bengal (Ex-officio) wherein it was stated as follows :-

"I am directed by order of the Governor to say that the Governor has been pleased to declare the Commandant, Border Wing Home Guard Battalion, West Bengal to be the appointing Authority and Controlling Officer in respect of group "B", "C and "D" posts in the said battalion created under this departments G.O. No. 1298-HCD dated the 21.5.1977 and also to be the Drawing and Disbursing Officer in respect of their pay and allowances and other contingencies with immediate effect."

This makes abundantly clear that the State of West Bengal and none else is the employer of the writ petitioners and the writ petitioners are in the employment of

the Government of West Bengal.

10. During the course of hearing the State Government relied upon some documents and copies which were filed in the Court in a bunch. It appears from Memo No. 1298-HCD/HG-2/77 dated 21st May, 1977 that the Governor conveyed the sanction for the creation of one Battalion of Home Guards to be termed as Border Wing Home Guard for the State of West Bengal and also the organisational set up from Annexures "A" and "B" of the said Memo there appear two types of Border Wing Home Guards, namely, Full Time Staff and Part Time Staff. The Full Time are entitled to the scale of pay while the Part Time are entitled to honoraria @ p.m. The Memo does not define the term honorarium but the term honorarium is defined in Rule 5(18) of the West Bengal Service Rules, Part-I, as under :-

"Honorarium means a recurring or non-recurring payment granted to a person from revenues as remuneration for special work of an occasional character."

11. So the writ petitioners who are working for a long period are rendering services of "occasional character" according to the above Memo which is absolutely incorrect. In another Memo dated 11th October, 1985 issued by the Deputy Secretary, Home (Civil Defence), Department of the Government of West Bengal it is admitted by the Government as follows :-

"Though the Border Wing Home Guard boys are supposed to render voluntary service and are subject to rotational duty, actually the same sets who were enrolled and deployed at the time of formation of the Battalion in 1977 are still working and their duties have never been rotated."

12. It is further stated in the said Memo as follows :-

"as they have worked continuously for more than 8 years, their case of permanency of service is very strong and if they take recourse to legal proceedings, as some of them have reportedly done, there is a strong possibility that they will win their case."

This admission of naked truth by the Home (Civil Defence) Department of the Government of West Bengal in such a bold manner must be an eyeopener to the Cabinet of the Government of West Bengal which must take immediate steps to redress the genuine grievances of these unfortunate people.

13. Now it is an admitted position that the writ petitioners are neither casual nor part-time staff of the Government of West Bengal. They are in fact regular full-time Border Wing Home Guards in the employment of the Government of West Bengal but the State Government in a most arbitrary and unashamed manner without any rhyme or reason treating them as irregular part-time casual Border Wing Home Guards.

14. It requires to be recorded that out of 8 Companies of Border Wing Home Guards including Battalion Head Quarter the total strength stands at 1,045 out of

which only 101 are Full-Time and the rest i.e. 944 are PartTime. The figures were disclosed by the State during the hearing of the writ petitions.

15. It will not be out of place to mention a case of identical facts decided by a Division Bench of the Gauhati High Court (Agartala Bench) in C.R. No. 119 of 1981 (Ratanlal Dutta v. State of Tripura and Ors.) (unreported) where a member of the Home Guards moved the High Court for the enforcement of his legal rights. The said High Court held on 22nd July, 1988 on the basis of the decision in the State of Assam and Others Vs. Shri Kanak Chandra Dutta, that the relationship of master and servant exists between a member of the Home Guards and the State Government and the Home Guards are holders of civil posts as envisaged under Article 311 of the Constitution. Their Lordships of the Gauhati High Court observed that from the Compendium of Instruction for Home Guards issued by the Ministry of Home Affairs it appears that they are permanent members of a staff for Border Wing Home Guard and has been rendering service since 1977 and it is the natural conclusion that they are the permanent staff and as such they are entitled to all the benefits including pay scale, allowances and other benefits at par with others applicable to the members of State Police Organisation.

16. It will not be out of place to mention that the authorities deduct Professional Tax from the pay packet of each petitioner under the provision of the West Bengal State Tax on Professions, Callings and Employments Act, 1979, thereby meaning that the writ petitioners do not receive honorarium but receive pay and are not part-timers but full-time Border Wing Home Guards. There is a pointed decision by the Supreme Court in Bhagwan Dass and Others Vs. State of Haryana and Others, . Here it was specifically held by the Apex Court that ones the nature and functions and the work of two persons are not shown to be dissimilar the fact that the recruitment was made in one way or the other would hardly be relevant from the point of view of "equal pay for equal work" doctrine. It was further held that whether appointments are for temporary periods and the Schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of "equal pay for equal work" is attracted. In paragraph 8 of the said decision the Supreme Court observed as under :-

"It is therefore futile to contend that the petitioners in their capacity as Supervisors were required only to perform part time work. As per clause " (d) of the aforesaid extract, the Supervisors were required to stay for the whole day in the village and were required to visit the Informal Education Centre (in the day ?) and the Adult Education Centre in the night. They were also required to go on tour and to remain at the headquarter once a week from 9.30 a.m. to 4.00 p.m. the conclusion is therefore inevitable that the petitioners were not part time functionaries but were whole time functionaries."

I must state that the law enunciated in the above case by the Supreme Court is in the backdrop of the fact in the instant case on principles.

17. Yet another decision directly on the point is of the Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, . Here the Supreme Court held that the Government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on a starving wages. It may be that the casual labourer has agreed to work on such low wages. That he has done because he has no other choice. It is poverty that has driven him to that state. The Government should be a model employer. Therefore the classification of employees into regularly recruited employees and casual employees rendering the same kind of service which is being rendered by the regular employees and getting less remuneration than the regular employees would not be tenable. It is further stated by the Supreme Court that there is no justification for doing so and such discrimination is violative of Articles 14 and 16 of the Constitution. It is also emphasised in the Judgment that such a policy is opposed to the spirit of Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966 which exhorts all States parties to ensure fair wages and equal wages for equal work. The Supreme Court quoted Article 38(2) of the Constitution and thereafter commented that even though the above Directive Principles may not be enforceable as such by virtue of Article 37, it may be relied upon by the petitioners to show that they have been subjected to hostile discrimination ; and the Supreme Court relied upon its previous decision reported in Dhirendra Chamoli and Another Vs. State of U.P., In the case of Grih Kalyan Kendra Workers Union v. Union of India and Ors. reported in AIR1991 SCW 194 the Supreme Court came out with the declaration that though "equal pay for equal work" is not expressly declared by the Constitution as a fundamental right but in view of the Directive Principles of State Policy as contained in Article 39(d) of the Constitution "equal pay for equal work" has assumed the status of fundamental right in service jurisprudence having regard to the constitutional mandate of equality in Articles 14 and 16 of the Constitution. The following passage from the said judgment is worth quoting:-

"Equal pay for equal work and providing security for service by regularising casual employment within a reasonable period has been accepted by the Supreme Court as a constitutional goal to our socialistic pattern. It has ceased to be a Judge-made law as it is the part of the constitutional philosophy which ensures a welfare socialistic pattern of a State providing equal opportunity to all and equal pay for equal work for similarly placed employees of the State. The Supreme Court has zealously enforced the fundamental right of equal pay for equal work in effectuating the constitutional goal of equality and social justice. Therefore, the principle of equal pay for equal work even in an establishment which is an instrumentality of a state is applicable to its full vigour."

The Supreme Court also held that while considering the principle of "equal pay for equal work" it is not necessary to find out similarity by mathematical formula or accuracy but there must be a reasonable similarity in the nature of work, performance of duties, the classification and the equality of work performed by the two sets of persons. It is permissible to have classification in services but

such classification must have a reasonable relation to the objects sought to be achieved.

18. It will not be out of place to refer the 5-Judge decision of the Supreme Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, and in particular the following quotation from P.B. Sawant, J. :-

"The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.

Both the society and the individual employees, therefore, have an anxious interest in service conditions being well defined and explicit to the extent possible. The arbitrary, rules which are also some times described as Henry VIII Rules, can have no place in any service conditions.

Beyond the self-deluding and self-asserting righteous presumption, there is nothing to support the so called "high authority" theory. This theory undoubtedly weighed with some authorities for some time in the past. But its unrealistic pretensions were soon noticed and it was buried without even so much as an ode to it."

19. Even from the argument of Mr. Roy appearing on behalf of the State of West Bengal it was apparent that discrimination is made between the Full Time staff of BWHG who get the pay scale and other benefits of State Armed Police and the status of the Part Time staff of BWHG are totally different. From a communication being Memo No. 5855/1 (5)-HCD dated 20th December, 1977 addressed to the Accountant-General of West Bengal by the Deputy Director of Civil Defence and Deputy Secretary to the Government of West Bengal, Ex-officio, it is specifically clear with regard to the Part Time personnel of the BWHG Battalion that these personnel when called on for training/duty would get pay and allowance appropriate to the ranks and trades in the State Armed Police. Naturally they will be paid pay and allowance only when called upon for training/duty and nototherwise. It is submitted by Mr. Roy that the State Government by Memo No. 1298-HCD/HG-2/77 dated 21st May, 1977 addressed to the Accountant-General of West Bengal sanctioned the creation of one Battalion of Border Wing Home Guard and provided fund for the purpose and also made clear that the expenditure as per Scheme would be initially made by the State Government subject to the full reimbursement by the Government of India. The word "subject" is a matter to be decided between the Government of West Bengal and the Government of India and the poor personnel of BWHG should not be the hapless victims of the fight between the minielephant and the tusker. When the Battalion of BWHG has been sanctioned and created by the State

Government, the State Government is duty bound to meet all the expenditure in accordance with law and cannot treat them shabbily. It is specifically submitted by Mr. Roy, the Senior Advocate for the State of West Bengal, that the Part Time staff have not remained part time by having been made to work continuously since their enrolment in 1977. Now this is an admitted position on behalf of the State Government and the Government cannot go back from this admitted stand. But it is a matter of regret that at the same breath Mr. Roy says that they do not get other benefits which is the cause of grievances. Why they should be denied other benefits if according to the admission of the State they have not remained part timers and why they should not be given all the benefits retrospectively since their dates of joining the service. The Government cannot play the joke of hide and seek. It does not behove the Government of the people by the people and for the people to take this type of plea before the Court and trample the principles of natural justice and fair play in practice. As I have stated earlier, the reimbursement of the wages of BWHG personnel by the Government of India to the Government of West Bengal is a matter between the two Governments and the Part-Time members of the BWHG should not be dragged into this controversy and their legitimate grievances must not be denied to them because of any difference of opinion between the Centre and the State. From a Memo dated 20th September, 1983 issued by the Deputy Secretary to the Government of India, Ministry of Home Affairs, addressed to the Principal Accounts Officer, Ministry of Home Affairs, it appears that the President did sanction over Rs. 11 lakhs as outstanding dues on account of Centre's share of assistance for Home Guards so the weak defence of the State that no assistance is made by the Central Government is not wholly true. It is admitted by the State Government that it is aware of the grievances of the petitioners and to mitigate their grievances the State Home Department, Civil Defence Bench, sent a proposal to the Government of India on 11th October, 1985 to convert the BWHG Battalion of the State into an Auxiliary Battalion, Border Security Force, for creation of permanency of service, increment, etc. This again is a matter to be decided by the two Governments and neither this Court nor the petitioners are in any way concerned with this matter. Simply harping on the tune that Home Guards belong to a voluntary organisation will not solve the problem of the State Government. The Government will have to be practical and tackle the task in a practical manner. The future of hundreds of Part-Time Border Wing Home Guards cannot hang upon the sweet whim of some high officials and administrators of the Government of West Bengal.

20. It is denied by Mr. Basu appearing for the Union of India and the Inspector-General of Police, Border Security Force, in words categorically that apart from reimbursing the expenditure incurred by the State Government towards their salaries and allowances during the period they would remain under B.S.F. Command, the Union of India would have no other least responsibility towards those Home Guards personnel. It was submitted by the Union of India that the writ petitioners were admittedly recruited by the State Government and are

accordingly governed by the service conditions of the State Government and as, such their grievances are matters which exclusively fall within the jurisdiction of the State Government alone. This statement on behalf of the Union of India is a final blow to the arguments put forward by the State Government. The Union of India has flatly denied their responsibility and frankly stated that the conditions of service of the Government of West Bengal will prevail so far as the petitioners are concerned. The Commandant of 54 and 76 Battalions, Border Security Force, respondent No. 6, has also adopted the line of argument of the Government of India. According to Mr. Sarkar appearing for respondent No. 7, the appointing authority of the Home Guard personnel is the Government of West Bengal and the administrative control over them is exercised by the Superintendent of Police, North 24-Parganas, as well as the Commander of Border Wing Home Guard, Government of West Bengal. As such the Union of India and the respondent No. 7 cannot redress any grievance of the petitioners and the appropriate authority is the State of West Bengal.

21. The Preamble to the Constitution of India is a blazing light for the High Courts to follow where Justice and Equality are in jeopardy. Having the beacon light of the Preamble, the Court can always be guided by that magnificent light and the principles underlying the Fundamental Rights and the Directive Principles of State Policy enshrined in the Constitution. The Preamble of the Sovereign Socialist Secular Democratic Republic secures for all its citizens :

Justice, social, economic and political ;

Equality of status and of opportunity.

The Preamble shows the general purpose behind the several provisions of the Constitution. In the case of His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala, , the majority of the Full Bench held that the directive specified in the Preamble contains the basic structure of our Constitution, and this very principle was laid in the case of Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, . It must be said that the post- A.K. Gopalan Vs. The State of Madras, decisions of the Supreme Court show that the Court is now inclined to take a larger cognizance of the Preamble and setting forth the goal of our political society, so that it may be invoked to determine the ambit of Fundamental Rights and the Directive Principles because it is the ideal of socialism, secularism and democracy which is elaborated by the enacting provisions State of Kerala and Another Vs. N.M. Thomas and Others, ; Waman Rao and Others Vs. Union of India (UOI) and Others, and Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others, .

22. It must be realised by all, once for all, that the days of hire and fire are over and discrimination by the State authorities can no longer be tolerated in the light of so many decisions of the Apex Court of India. The nefarious manoeuvring by those occupying the chairs of power and position against the poor can no longer

stand in the way of one's legitimate rights and privileges at the mercy of the authorities. In this case it is crystal clear that the Government of West Bengal definitely meted out hostile discrimination between the Full-Time personnel of Border Wing Home Guard and the personnel of Part-Time Border Wing Home Guard. This is an admitted position. Because of the most unrealistic attitude of the State Government, I cannot resist the temptation to quote the following passage :-

"The law exists to serve the needs of the society which is governed by it. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of that society. It must keep time with the heart-beats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable, the early nineteenth century essayist and wit, Sydney Smit, said, "When I hear any man talk of an unalterable law, I am convinced that he is an unalterable fool." The law must, therefore, in a changing society march in tune with the changed ideas and ideologies. Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too Slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society" Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, .

23. It will not be out of place to refer once again to a letter bearing No. 5280-HCD/HG-2/77 Pt. dated 11th October, 1985 written by the Deputy Secretary, Home (Civil Defence), Government of West Bengal, to the Director General, Civil Defence, Ministry of Home Affairs, New Delhi, on the subject of permanency of Border Wing Home Guard Battalion now working at Indo-Bangladesh Border along with Border Security Force. The Government of West Bengal admits very categorically in this letter that since 1977 the Border Wing Home Guard Battalion is working and discharging their duties in the Border with the B.S.F. Jawans and are staying with them on the basis of "no work no pay." They do not enjoy any permanency of service nor any increment, they do not get any leave whatsoever throughout their services nor they get T.A./Transfer T.A. etc. like B.S.F. Jawans, nor they have any scope of promotion beyond the rank of Lance Nayek/Nayek, nor they are entitled to any retiring benefit. It is further stated in the said letter that they are experienced hands and the case of their permanency of service is very strong and if they take recourse to legal proceedings, there is a strong possibility that they would win their case. At the end it was requested that the Border Wing Home Guard Battalion of West Bengal Government might be converted into an Auxiliary Battalion of the Border Security Force. So far the

content of the letter is concerned the position is absolutely clear that on the very admission of the State of West Bengal hostile discrimination is being made with the personnel of Border Wing Home Guard. The concluding portion is totally a different thing and a matter to be resolved between the Centre and the State, whether the Centre will agree to convert BWHG as Auxiliary Battalion of B.S.F. is altogether a different issue between the two authorities. For this prolonged controversy the poor part-time members of BWHG must not suffer nor be punished, and should not stand in darkness throughout their service career.

24. This Court must record that the Part-Time personnel of the Border Wing Home Guard suffered mental torture in most inhuman condition for years contrary to the spirit of the Constitution. The Union of India flatly refused to accept any responsibility relating to safety, security, tenure of service and retirement benefits and categorically stated that the above responsibility lay with the State of West Bengal. The State of West Bengal's unabashed confession of "no work no pay" to the Part-Time personnel of the Border Wing Home Guard is itself a criminal confession on oath after a plethora of judgments by the Apex Court. The Affidavit filed by the State is a most undesirable piece of defence sidetracking all norms and principles of natural justice and fair play as "enunciated and interpreted by the Supreme Court during the last two decades. It must be borne in mind that the petitioners are sentinels of our international Indo-Bangladesh Border and working in close co-operation, rather hand-in-hand, with the Border Security Force.

25. In the light of the discussions made hereinbefore, I allow all the four writ petitions and direct that the Part-Time members of the Border Wing Home Guard will be treated at par with the Full-Time staff of Border Wing Home Guard and will get all the privileges of the State Armed Police as extended to the Full-Time Border Wing Home Guards. I further direct that the writ petitioners will be given all benefits admissible to the West Bengal Government's servants including fixation of pay, benefit of Provident Fund, gratuity, retiring benefits, leave privileges, all admissible Government allowances and increments including usual holidays as given to the Government employees under the Rules. They will be given the arrears of service benefit and fixation of pay scale since they have joined as Border Wing Home Guards. The respondents are further directed to absorb the Part-Time personnel of BWHG on permanent basis from the date of their joining the BWHG retrospectively and the age bar, if any, stands hereby waived. As this Judgment is delivered on the basic principles of justice and equality as enshrined in the Constitution of India, it shall operate in rent and covers all the Part-Time members of the Border Wing Home Guard. The Chief Secretary to the Government of West Bengal, the Secretaries, Home Department and Finance Department, both of the Government of West Bengal, are directed to implement this order within 31st July, 1992. The Chief Secretary to the Government of West Bengal is further directed to bring the contents of this Judgment to the notice of the Hon'ble Chief Minister of West Bengal whose fairness and sense of justice cannot be questioned.

26. As all the writ petitioners, 273 in number, have suffered miserably in most inhuman condition at the hands of the State of West Bengal for years together and they were virtually treated as bonded labourers, I think this is the fit case to impose befitting exemplary cost upon the State of West Bengal in view of the facts and circumstances of the case. I direct the State of West Bengal to pay to each one of the petitioners in all the four writ petitions cost assessed at Rs. 1,000.00 (Rupees one thousand) only which comes to Rs. 2,73,000.00 (Rupees two lakhs seventy-three thousand) in total.

27. All the four writ applications accordingly succeed with above directions.

28. Let xerox copy of the Judgment be made available to the parties on usual undertaking and upon compliance of necessary formalities.

29. The Registrar, Appellate Side, High Court, is directed to forward without delay two xerox copies of the Judgment to the Chief Secretary to the Government of West Bengal, and one xerox copy each to the Home Secretary and the Finance Secretary of the Government of West Bengal, all at the Writers' Buildings, Calcutta.