

(1987) 09 CAL CK 0017
In the Calcutta High Court
Case No : C.O. No. 3323 (W) of 1987

Satish Mallick

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 11-09-1987

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 323, 324, 325
West Bengal Home Guards Act, 1962 — Section 4

Citation : 92 CWN 614

Hon'ble Judges : K.M. Yusuf, J

Bench : Single Bench

Advocate : Gopal Chandra Mukherjee and Prasanta Kumar Banerjee, for the Appellant; Pulak Ranjan Mondal for State, for the Respondent

Judgement

K.M. Yusuf, J.—The writ petitioner was appointed as a member of the Home Guard in 1966 u/s 4 of the West Bengal Home Guards" Act, 1962 and joined his duties. When he was posted at Jangipara Police Station an incident took place on 15th June, 1986 around 12 noon in his village at Bistupur when some persons attacked the petitioner and his family members with lathi and other weapons and injured him. The petitioner lodged a diary No. 5/52 and a police case was instituted under Sections 147/148/323/337/447 of I.P.C., on the other, hand the accused persons also lodged a diary and a Police Case No. 4 under sections 147/148/341/323/324/325 of I.P.C. was started. The petitioner was put under arrest and was kept under custody for whole day and night and the next day he was released on bail by the Court. On 17th June, 1986 the petitioner joined his duties normally and continued till 19th June, 1986, but when on the next day he went into office he was served with a notice by Respondent No. 1, the Superintendent of Police, Hooghly, under G.R.No. 30 (Org. No. 241/HG) dated 29th June, 1986 demobilising the writ petitioner from Jangipara Group with immediate effect. He made representations to the respondent for the withdrawal of the order of demobilisation but there was no response. An affidavit-in-opposition on behalf of the State-Respondents has been filed stating, inter alia,

that the police case involving the writ petitioner is pending and the petitioner is charge sheeted. He was not allowed to join Home Guard Organisation after being released on bail because a criminal case was pending against him and that he has been temporarily removed from the organisation by reason of his misconduct and breach of discipline and involvement in the criminal case which renders him unfit "to act as Home Guard under rule 9(i) of the West Bengal Home Guard Rules, 1962. If the petitioner is acquitted by the Court his case would be considered forthwith for mobilisation as a Home Guard.

2. Mr. Mukherjee, the learned Counsel appearing for the petitioner, submits that there was no act of misconduct or breach of discipline in any way on the part of the petitioner which renders him unfit to continue as a Home Guard. He was involved in a criminal dispute when his family was attacked by some people in his native village and on the instigation of the accused persons the writ petitioner was arrested and put in custody for 24 hours. He refers to Rule 7(3) of the West Bengal Services (classification, Control and Appeal) Rules, 1971 which says that a Government servant who is detained in custody for a period exceeding 48 hours under any law for preventive detention or as a result of a proceeding either on a criminal charge or otherwise, shall be deemed to have been suspended, by an order of the appointing authority, with effect from the date of his detention and shall remain under suspension until further orders. He submits that the petitioner was detained only for 24 hours and, as such, he does not come under the mischief of this Rule. His contention is that the order of demobilisation passed on 20th June, 1986 is bad in law and must be set aside.

3. Mr. Mondal, the learned Counsel for the State Respondents, submits that there was clear misconduct and breach of discipline on the part of the petitioner as envisaged under Rule 9(i) of the West Bengal Home Guard Rules, 1962. He further submits that a Home Guard is not a permanent servant of the Government and is not paid any monthly salary but his services are requisitioned whenever necessary and allotment of work is given from time to time and payment is accordingly made. He says that the F.I.R. lodged against him is of grave nature of quarreling and hurting the villagers which indicates a gross misconduct and indiscipline on the part of a Home Guard. It will be wrong to say that he is under suspension because order of suspension can be inflicted only upon a permanent Government servant as per the West Bengal Services (Classification, Control and Appeal) Rules, 1971. A Home Guard can be demobilised at any time according to the convenience of the higher authority and his services can also be requisitioned whenever necessary. Mr. Mondal submits that as this particular Home Guard has committed a grave act of indiscipline, the order of demobilisation could not be interefered with. He further assures that if the petitioner is acquitted from the criminal case which is pending, his case of mobilisation will at once be considered sympathetically by the authorities and he will suffer no prejudice.

4. I do not find much force in the argument of Mr. Mondal that the petitioner has

committed a gross act of misconduct and indiscipline. It is an admitted fact that some quarrel took place in the village of the petitioner and there was use of force as well. A criminal case to its effect is pending against the petitioner and he was released on bail and charge sheeted but the trial is in progress and his guilt has not yet been proved. It cannot be said before hand whether he was actually an aggressor or a victim or whether he committed any act of misconduct or indiscipline. The facts indicate that the order of demobilisation is the direct effect of the criminal case and is a punishment inflicted upon the petitioner. The demobilisation has not been made in the normal course but appears a penal measure. In the circumstances I am inclined to accept the submissions made by Mr. Mukherjee on behalf of the petitioner though, of course, the W.B. Services (Classification, Control and Appeal) Rules, 1971 is not applicable in this case. In that view of the matter I allow the writ application, set aside and quash the impugned order of demobilisation being G.R. No. 30 (Org. No. 241/HG) dated 20th June, 1986 passed by the Additional Superintendent of Police, Hooghly, Respondent No. 5. The Respondents, however, will be at liberty to allot the duties to the petitioner in accordance to their convenience and suitability. I further make it clear that in case the petitioner is found guilty and is convicted under the criminal proceeding which is now pending, he will be demobilised as Home Guard permanently. The writ petition is disposed of accordingly. There will be no order as to costs.