

(2007) 02 SC CK 0053

In the Supreme Court Of India

Case No : Civil Appeal No's. 1897-1901 of 2000

State of Manipur and Another

APPELLANT

Vs

Ksh. Moirangninthou Singh and Others

RESPONDENT

Date of Decision : 26-02-2007

Acts Referred:

Manipur Home Guards Act, 1966 — Section 4(4)
Manipur Home Guards Rules, 1981 — Rule 3, 7, 8

Citation : (2007) 113 FLR 199 : (2009) 2 GLT 48 : (2007) 3 SCALE 501 : (2007) 10 SCC 544 : (2008) 1 SCC(L&S) 35 : (2007) 3 SCR 193 : (2008) 1 SLJ 1

Hon'ble Judges : S. B. Sinha, J;Markandey Katju, J

Bench : Division Bench

Advocate : V.N. Ganpule, Khwairakpam Nobin Singh and S. Biswajit Meitei, for the Appellant; G.E. Vahanvati, Sol. Gen., S. K. Bhattacharya, L.K. Paonam, Ajay Kumar Porwal, Devadatt Kamat, Harishikesh Baruah and Sushma Suri, for the Respondent

Final Decision : Allowed

Judgement

Markandey Katju, J.—These appeals have been filed against the impugned judgment of the Guwahati High Court, Imphal Bench dated 9.6.1999 in Writ Appeal Nos. 97 of 1995 and 14 to 17 of 1996.

2. Heard learned Counsel for the parties and perused the record.

It appears that the respondents had filed several writ petitions in the Guwahati High Court inter alia praying that their services be regularized in the Home Guards and that they be given regular pay scales.

3. The learned Single Judge by his judgment directed the State Government to regularize the services of the writ petitioners and to grant them all service benefits, including pensionary benefits, as are payable to government employees holding civil posts. The learned Single Judge also directed that the services of the employees who have put in 10 years' of service in the Home Guards should be

regularized. The learned Single Judge further directed amendment of the Rules and the Act. Against the said judgment of the learned Single Judge an appeal was filed before the Division Bench. The Division Bench held that the learned Single Judge had no power to direct amendment of the Act and the Rules, and we fully agree with this view since the Act can be amended only by the Legislature and the Rules can only be amended by the State Government, or the authority empowered under the Manipur Home Guards Act, 1947. However, the Division Bench upheld the other directions given in the judgment of the learned Single Judge.

4. We are of the opinion that in view of the Constitution Bench judgment of this Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, this Court cannot direct regularization in service. Since the Court has no power to direct regularization, it also follows that it has no power to direct grant of benefits payable to the regular employees. It may be noted that Home Guards Act has been constituted as a voluntary organization for service in emergencies and hence it cannot be treated at par with other organizations like the army, para military organizations or the civil police.

5. We have carefully perused the Manipur Home Guards Act, 1966. Section 4(4) of the Act states as under:

Subject to any rules made in this behalf, a Home Guard shall be required to serve the Home Guards organization for a period of three years (including the period spent in training) which period may be extended by the Government to such further period as it may consider necessary, and a Home Guard shall thereafter serve in the reserve force of Home Guards constituted as hereinafter provided for a period of three years and shall, while serving in such reserve force, be liable to be called out for duty at any time.

Section 8 states:

The Home Guards may be called out in aid of the Police force and when they are so called out they shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed.

6. Learned Counsel for the respondents has invited our attention to Rule 3 of the Rules which states that no person shall be appointed as a member of the Home Guards unless he has attained the age of 20 years and has not completed the age of 50 years. Learned Counsel submitted that this means that a member of the Home Guard has a right to continue till the age of 50 years. We do not agree. The 50-year age is the maximum limit after which a member of the Home Guards cannot be appointed. Rule 7 of the Manipur Home Guards Rules 1981 states that the term of office of a member of the Home Guards shall be 3 years, but once appointed he shall be eligible for re-appointment. However, Rule 8 states that a member of the Home Guards can continue to be such a member until he attains the age of 55 years. Hence, the initial term of appointment of a member of the Home Guards can only be three years, and he can be reappointed

from time to time, but he cannot continue after the age of 55 years.

7. A perusal of the provisions of the Home Guards Act and Rules show that the Home Guards was meant to be a reserve force which was to be utilized in emergencies, but it was not a service like the police, para military force, or army, and there is no right in a member to continue till the age of 55 years. We approve the view taken by the Delhi High Court in *Rajesh Mishra and Others Vs. Govt. of NCT of Delhi and Others*, .

8. The initial appointment is for 3 years after which it is at the discretion of the Commandant (subject to approval of the Commandant General) to reappoint a member of the Home Guards, or not. The concept of Home Guards was of a voluntary citizen force as auxiliary to the police for maintaining law and order and for meeting emergencies like floods, fires, famine etc and for civil defence.

9. For the reasons given above these appeals are allowed and the impugned judgment of the Division Bench as well as of the learned Single Judge are set aside and the writ petitions filed in the Guwahati High Court are dismissed. There shall be no order as to costs. Before parting with this case, we would like to observe that the Home Guards Act in several States appears to be misused. Hence, the Central Government may consider not releasing funds for the Home Guards in a State where the provisions of the Act are not being strictly followed.