

(2018) 03 PAT CK 0101

In the Patna High Court

Case No : Letters Patent Appeal No.1526 of 2014 Civil Writ Jurisdiction Case
No.14923 of 2010

The State Of Bihar & Ors

APPELLANT

Vs

Mishri Lal Mandal & Ors

RESPONDENT

Date of Decision : 06-03-2018

Acts Referred:

Bihar Home Guards Act, 1947 — Section 3, 3(2), 8

Bihar Home Guards Rules, 1953 — Rule 4, 5, 5(2)(ii), 5(4)(i), 5(4)(iii), 5(4)(v)

Citation : (2018) 3 PLJR 48

Hon'ble Judges : Ajay Kumar Tripathi;Nilu Agrawal

Bench : Division Bench

Advocate : Ashutosh Ranjan Pandey;Anil Kumar Tiwary;Chtranjan Sinha;Pramod Mishra

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. The intra-court appeal has been preferred by the State against the order, dated 19.11.2013, passed by a Learned Single Judge in C.W.J.C. No.

14923 of 2010. Since the writ application was allowed and the decision of the Commandant, Bihar HomeGuard, dated 08.04.2009, Annexure 1 to

the writ application, was quashed and a direction was given upon the State authorities to count 1½ Adhoc Period of Service 1½ w.e.f. June, 1983, for

the purposes of computing the benefit of retiral dues, it has become the reason for assailing the order.

3. The submission of Learned Additional Advocate General No. 15, representing the State of Bihar, is that the Learned Single Judge has committed

serious error of fact as well as law in allowing the writ application in favour of the petitioners, who are private-respondents in the present appeal.

4. So far as fact is concerned, despite taking note of the nature of enrollment as well as voluntary nature of the force, which Home-Guards are, and

despite enrollment being made under Bihar Home-Guards Act, 1947 and the Bihar Home-Guard Rules, 1953, the Learned Single Judge has treated

such cases of enrollment, as if the volunteers were daily-wagers, working under the State for a long period of time and, therefore, were entitled for the

benefit of regularization and the Constitution Bench decision, rendered by the Hon'ble Apex Court in the case of Secretary, State of Karnataka Vr.

Uma Devi, reported in (2006) 4 SCC 1, has been pressed into service to grant relief.

5. The Learned Single Judge has failed to appreciate that the engagement in terms of the enrollment of the private-respondents was a totally voluntary

service and, therefore, services at times are utilized dependent on the contingency, for which they are deployed on the orders of the authorities. They

are paid a token amount for the services rendered for the day and they can in no manner be said to be an employee of the State working on daily-

wage. The principles governing regularization, therefore, has been wrongly applied in the present case, because factually the Home-Guard volunteers

cannot be equated with a daily-wager.

The Learned Single Judge has taken note of the provisions of the Bihar Home-Guards Act, 1947 as well as the Rules in paragraphs 10, 11 and 12 of

the decision, which reads as under:

10. In the year 1959, pursuant to decisions taken by the Central Government, a purely voluntary organization was set up for enrollment of Home

Guards. The enrollment/recruitment of Home Guards is governed by Bihar Home Guards Act, 1947 as well as Bihar Home Guards Rules, 1953. In

terms of Act and Rules, the Central Government decided to enroll Home Guards as a Volunteer organization for maintenance of peace and

tranquility in the State and to increase the habit of self reliance and discipline among the members of the force in particular and public in general and to

develop in them a sense of civic responsibilities. Petitioners were engaged in 1971-73 by the order of the District Magistrate under Rule 4 of the Bihar

Home Guards Rules, 1953. The State Government vide notification dated 13.8.1981 decided to create 3 Battalions to be recruited under the

Chairmanship of Commandant, Home Guards in accordance with the provisions

of the Bihar Home Guards Act, 1947.

11. Sections 3 of the Act, 1947 provides for constitution of the Home Guards to discharge function in relation to the protection of persons, the security

of property or public safety in any area within the State of Bihar as may be assigned to them in accordance with the provisions of this Act and the

Rules made thereunder. The Act, 1947 has been enacted to provide a voluntary organization to assist in the maintenance of peace and tranquility in

the State and to increase habit of self reliance and discipline among the members of the force in particular and public in general and to develop in them

a sense of civic responsibilities. Section 3(2) of the Act, 1947 contemplates that the Home guards be deemed to be a single force and the members

thereof shall be formally enrolled.

12. Rule 5 of Bihar Home Guards Rules, 1953 deals with the procedure for appointment of officers and men of the Home Guards force. Rule 5(2)(iii)

of the Rules, 1953 states that Commandant shall appoint all Havildar clerks, Writer Naiks, Naiks, L.Naiks and sepoy in the force. Rule 5(4) (i)

provides that the candidates are required to submit applications for enrollment as a Home Guards to the District Magistrate. Rule 5(4) (v) provides

that the Home Guards will be enrolled before joining the training camp by the Officer Commanding, Training Centre, who shall obtain the approval of

the District Magistrate of the District concerned. Rule 5(4)(iii) provides that after holding tests of the general knowledge, alertness, intelligence and

physical fitness of the candidates. Under section 8 of the Bihar Home Guards Act, 1947, a Home Guard is required to serve the State Government for

a period of 12 months which may be extended up to three years. Contention of the candidates. Under section 8 of the Bihar Home Guards Act, 1947,

a Home Guard is required to serve the State Government for a period of 12 months which may be extended up to three years. Contention of the

petitioners is that they had been engaged between 1971-73 by order of the District Magistrate under Rule 4 of the Bihar Home Guards Rules, 1953.

Subsequently in view of 1981 notification they were selected as Home Guards volunteers/Jawans after following due selection process as provided

under the Bihar Home Guards Act, 1947 and Bihar Home Guards Rules, 1953 against sanctioned vacant post. 1½

7. Despite the above positions, having been taken note of, the Learned Single

Judge has committed serious error by treating these Home-Guard volunteers or Jawans, as if they have been duly selected and appointed under the State on a substantive basis for the period, in question, for which direction had been issued for computation of their post retirement dues.

8. It makes no difference whether the State Government set up a special voluntary force or battalion, for which certain exercise was carried out for selection. The nature of the force or the engagement of such volunteers, was not altered in any manner and they still continue to be governed by the Home-Guards Act, 1947 as well as Bihar Home-Guards Rules, 1953.

9. If this be so, then treating that period of work or engagement as employment under the State was a serious fallacy committed by the Learned Single

Judge and, therefore, the decision by the Learned Single Judge giving a direction to the State to include or compute the period from 1983 till their

superannuation after their substantive appointment in the year 1999, is de hors the law as well as the Rules, which govern such engagement.

10. Learned senior counsel representing the private respondents submits that the regularization or absorption or appointment as regular Sepoys of the

Home-Guards volunteers was on the basis of a decision taken by the State Government, which, in turn, was on the basis of a direction issued by a

Division Bench of this Court. The initiation of the process started sometime in the year 1991 and merely because there has been delay in decision

making, which fructified in the year 1999, the private respondents cannot be faulted and their valuable right for grant of pension for the period they had

rendered service under the State, cannot be taken away.

11. The alternative submission on behalf of the learned senior counsel is that even if the year 1983 should not be considered for grant of benefit, at

least the State should be directed to include that period from the year 1991.

12. There seems to be basic fallacy in the two submissions made on behalf of private respondents for the reason that if the concept of enrollment of

the Home-Guards as volunteers is not a matter of arguments, then by no stretch of imagination they can be treated to be working as a daily-wager

under the State, for which they need to be given the benefit of working in a kind of ad-hoc engagement from the period 1983.

13. In the above circumstances the State has succeeded in making out a case for interference with the impugned order, dated 19.11.2013. We are

satisfied that despite taking note of the nature of the engagement and enrollment of Home-Guards volunteers, the Learned Single Judge mixed up the principles of service jurisprudence of regularization, which anyway was not the case of the private-respondents. They came in service on a

substantive basis in the year 1999, may be on the direction of the High Court and due consideration by the State. But their earlier period of remaining

on the rolls as a Home-Guard volunteer does not undergo any change in any manner, which can beget them the benefit of having put in work for the

so called 'adhoc period' w.e.f. June, 1983.

14. It goes without saying that since substantive appointment on the post of Sipoy was made on 04.02.1999, all those persons, who are entitled and

who meet the minimum eligibility for grant of pension, shall derive benefit thereof, but the direction of the Learned Single Judge to include or treat the

period from June, 1983 till 04.02.1999, for the purpose of computing their pension and retiral benefit, is uncalled for.

Appeal is allowed. The impugned order, dated 19.11.2013 is set aside.