

SUPREME COURT OF INDIA

State of West Bengal

Vs.

Jiban Krishna Das

C.A.No.1468 of 1995

(S. Rajendra Babu, K.G. Balakrishnan and P. Venkatarama Reddi JJ.)

29.04.2002

JUDGMENT

K.G. Balakrishnan, J.

1. For the protection of the boundaries of the border districts and also to give training to some citizens in the use of fire-arms so that their services could be used during the period of an emergency, a National Volunteer Force was constituted in West Bengal. For that purpose, the *West Bengal National Volunteer Act, 1949* (for short, "the Act") was enacted in 1949. The Volunteer Force was known as "West Bengal National Volunteer Force". Section 4 of the Act says that a volunteer, when called upon for duty, shall discharge such functions in relation to the protection of persons, the security of property and the preservation of the public peace in any area within West Bengal and such other functions as may be assigned to him. Every volunteer has to undergo a preliminary and periodical training. The West Bengal National Volunteer Force Rules, 1949, have also been framed under the Act. The conditions of recruitment are prescribed under Rule 3. Initially, the period of enrolment in the Force was for three years from the date on which the recruit received the certificate of enrolment. Later, this period was increased to ten years in 1987. Still later, the time limit was removed, but upper age limit of 45 years was prescribed. Now, by subsequent amendment, the upper age limit is fixed at 60 years. It seems that the total number of the volunteers had increased to thirteen thousand and odd and the services of all of these recruits were not required by the State. In order to regularise their services and to give opportunity to more and more persons in an equitable manner, a Notification was issued by the State Govt. in the year 1969. The circular issued is to the following effect:

"Undersigned is directed to say that with a view to giving opportunity to all the Trained Volunteer of the West Bengal National Volunteer Force on the standing list to gain practical experience in discharging the duties assigned to them a batch of National Volunteer Force. Volunteers called up under section 10(1) or under Section 10A(1) of the *West Bengal National Volunteers Force Act, 1949*, and deployed for duty should not be retained for more than 3 months at a stretch. If the services of such volunteers are required beyond the period of 3 months, a fresh batch of volunteers should be called up and deployed on duty, there should thus, in such cases, be a

regular rotation of National Volunteers Force personnel called up for duty for every three (3) months."

2. As per the circular, a volunteer is to be deployed for duty for a period of 3 months at a stretch and if the services of such volunteer are required beyond the period of three months, a fresh batch of volunteers should be called up and deployed on duty and in such a way the rotational system was to be implemented.

3. The above Notification was challenged by a group of volunteers by filing a writ petition before the High Court of Calcutta. These volunteers contended that the Notification issued by the State Govt. was an arbitrary and illegal exercise of power and the volunteers were denied employment. It was contended that though it is called a Volunteer Force, they were discharging duties of Police Constables and therefore, they were entitled to the same service conditions that are applicable to the police force and that once a volunteer was enrolled in the Force and received a certificate, he shall not be denied employment and that the rotational system denied opportunity of employment to these volunteers. It was argued that the petitioners had joined the National Volunteers Force and when they had been continuing in the Force for several years, it was too late in the day to say that they were not entitled to get 'permanent' status. The learned Single Judge rejected this contention and held that this was only a Volunteer Force and the rotation system was intended to give opportunities to more and more members of the Force. The decision of the learned Single Judge was challenged before the Division Bench and the Division Bench of the Calcutta High Court held that even though the Force is termed as "Volunteer Force", the same was not voluntary at all and once a volunteer accepts a certificate under the Rules, he becomes a permanent member of the Force and he is bound to carry out any order of the higher authorities. It was held that the petitioners in the writ petition had rendered more than 240 days and they are entitled to get permanency. The Division Bench held:

4. We are of the view that the appellants were entitled to be regularized and are entitled to regular work and not on rotational basis. Accordingly, we hold that the members of the National Volunteers Force are held to be under the employment of the Government and that they are entitled to get that status and other benefits as an employee of the State Government are getting and are entitled to get regular work and not work on rotational system which had been introduced. The circular in question by which the rotational system has been introduced is declared arbitrary and illegal and not binding upon the members of the Force."

5. The above decision of the Division Bench is challenged before us in these appeals by the State of West Bengal. We heard learned counsel on both sides.

6. The counsel for the appellants contended that the Statute, namely, *West Bengal National Volunteer Force Act, 1949* envisaged only the creation of a Volunteer Force and the members of the Force are not to be treated as on par with the members of the Police Force or any other para military service. The preamble of the Act reads as follows:

"WHEREAS it is expedient and necessary to provide for the constitution of a National Volunteer Force in West Bengal by enrolment therein of the citizens of India or persons having permanent domicile in West Bengal who may offer themselves for such enrolment for service during a period of emergency and for such other purposes as the State Government may think fit."

7. Section 3 of the Act says that West Bengal National Volunteer Force shall be under the control and superintendence of the Inspector General.

8. Section 4 says that a volunteer of the Force when called upon for duty, shall discharge such functions in relation to the protection of persons, the security of property and the preservation of the public peace in any area within West Bengal and such other functions as may be assigned to him under the Act. The Act further provides that every volunteer shall undergo preliminary training and every person enrolled as volunteer under the Act is entitled to receive a certificate of discharge in the prescribed form on the expiration of the period for which he was enrolled. Section 8 (5) (a) says that the prescribed authority can suspend, discharge, dismiss or remove any volunteer from his office and the prescribed authority can also disband any unit constituted under the Act. Section 10 prescribes the mode in which the prescribed authority may at any time call upon any volunteer for discharging any function assigned to him anywhere in West Bengal and the Commissioner of Police in Calcutta or the District Magistrate elsewhere, at any time, call upon the District or Unit Commandant to mobilize any unit or a detachment of a unit for the purpose of maintenance of law and order. Rules have also been framed prescribing the mode of recruitment, the nature of enrolment and training under the Act.

9. On a close perusal of the provisions of the Act and Rules, it is clear that the members of the West Bengal National Volunteer Force were recruited to create a volunteers force and the provisions of the Act never intended to give permanency to the members of the Force. Their services were in fact required to meet emergent situations. Merely because the members of the Force have to be treated as public servants and their duties are to be regulated by some prescribed code of conduct, it cannot be said that they will have to be treated as Constables of the Police Force. Therefore, the direction of the Division Bench to give status and other benefits as employees of the State Govt. was not legal. It is also not correct to say that the members of the West Bengal National Volunteer Force are entitled to get permanency. As per the provisions of the Act, the members of the Force can continue upto the age of 60 years, provided their services are required by the authorities.

10. The counsel for the appellants pointed out that the respondents are not regularly recruited Govt. employees and they are not entitled to get equal pay or other service benefits, which are available to Govt. employees. It was also pointed out that the conditions for recruitment to the Volunteer Force are also totally different and no educational qualification as such is prescribed for enrolment in the Volunteer Force and that even students can get themselves enrolled in the Force. Whether the members of the Volunteer Force are entitled to get equal pay and other benefits which are available to the Constables under the West Bengal Police Force was considered by this Court in *State of West Bengal & Ors. vs. Hari Narayan Bhowal*

*& Ors.*¹. This Court held that the West Bengal National Volunteer Force is a Force of volunteer and when called upon for duty, a volunteer has to discharge such functions in relation to protection of persons, the security of property and preservation of the public peace in any area within West Bengal and such other functions as may be assigned to him. The whole concept of the National Volunteer Force is different from that of Police Force and in respect of the Volunteers it can be said that it is a standby Force, not only for law and order but for different emergencies, to aid and help the regular Police Force or members of other Services. It was held in paragraph 13 as under:

" On the material on record, it is difficult to hold that the respondents who had been enrolled as volunteers under the West Bengal National Volunteer Force Act, belong to the class of Constables, under the West Bengal Police Force and to treat them separately in matters of fixation of scale of pay, amounts to violating Article 14 of the Constitution. According to us, they form two different classes in public service. In this background, the High Court was in error in treating them at par with the Constables of the West Bengal State Police Force."

11. Therefore, the direction of the Division Bench that the members of the National Volunteer Force are entitled to get status and other benefits as employees of the State Govt. is not correct and the members of the National Volunteer Force are not entitled to get the service benefits which are available to the employees of the State Govt.

12. The counsel for the respondents pointed out that after the issuance of the circular dated 3.6.1969, several members of the Force had attained the age of 60 years and the total number of members in the Force has decreased and that the total number of posts available being about eleven thousand and odd, no rotation system as such is required and all the members can be given service for the entire year. It is submitted that from the year 1984 enrolment to the Force itself was stopped and only few hands were recruited and therefore job opportunities are available to the existing members.

13. All these are matters to be looked into by the authorities. However, we are of the view that circular dated 3.6.1969 was intended to give job opportunities to more and more people in an equitable manner. We do not think that it is an illegal or arbitrary exercise of power. The Division Bench was not justified in setting aside the circular dated 3.6.1969. Therefore, these appeals are allowed and the directions of the Division Bench are set aside. The appellants are at liberty to enforce the circular dated 3.6.1969.

14. There will be no order as to costs.

¹(1994) 4 SCC 78