

SUPREME COURT OF INDIA

Grah Rakshak, Home Guards Wel.Aссо.

Vs.

State of H.P.

C.A.No.2759 of 2015

(Sudhansu Jyoti Mukhopadhaya and N.V.Ramana JJ.)

11.03.2015

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA,J

1. Delay condoned. Applications for deletion of proforma respondents, substitution and permission to file SLP are allowed. Leave granted.
2. As these appeals involve a common question of law, they have been heard together and are being disposed of by this common judgment.
3. The appellants herein are individuals who are Home Guards of States of Himachal Pradesh, Punjab and National Capital of Territory of Delhi ('N.C.T of Delhi' for short). They and their Association moved before High Courts in their respective States seeking regularization of their services by filing writ petitions. The judgments and orders impugned herein are those passed by the High Courts in such writ petitions. By the impugned judgments and orders, the High Courts dismissed the writ petitions filed by the appellants.
4. The questions involved in these appeals are whether Home Guards of States of Himachal Pradesh, Punjab and N.C.T of Delhi are regular appointees in the cadre/services of Home Guards and if not whether they are entitled for regularization of their services.
5. The learned counsel for the appellants have taken the plea that the appellants are working as Home Guards without any break for about 10 to 30 years. In spite of the same, they were not given any benefits available to regular employees. They have neither been granted regular pay scale, nor have their services regularized.

6. Per contra, according to learned counsels for the States, the appellants were appointed as Home Guards volunteers, working on honorary basis and hence are entitled only for duty allowance as per the schemes i.e. Acts and Rules framed for the said purpose.

7. For determination of the issues, it is necessary to notice the 'Genesis' of Home Guards Organization and relevant provisions of Acts and Rules framed by different States with regard to Home Guards Organization.

8. Genesis In the Compendium of Instructions of Home Guards published by Directorate General Civil Defence, Ministry of Home Affairs, Government of India, New Delhi, the Genesis of Home Guard Organization is shown as below:

"1.1. Genesis During World War-II, 'Home Guards'- a voluntary citizen organization for local defence was raised in the United Kingdom. In India, in 6th December 1946, Home Guards were raised in Bombay to assist the police in controlling Civil disturbances and communal riots. Subsequently, this concept of a voluntary citizen's force as auxiliary to the Police for maintenance of law and order and for meeting emergencies like floods, fires, famines etc. was adopted by several other States such as Paranti Raksha Dal, West Bengal Village block and Civic Guards. In the wake of Chinese Aggression in 1962, the Centre advised the States and Union Territories to merge their existing voluntary organizations into one all - India force known as 'Home Guards' which would be voluntary both in concept and character.

1.2. Role The following revised roles are assigned to the Home Guards. These instructions have been reiterated from time to time:

(a) Serve as an auxiliary to the police and assist in maintaining internal security.

(b) Assist the community in any kind of emergency an air raid, a fire, a flood, an epidemic and so on.

(c) Organise functional units to provide essential services such as motor transport, pioneer and engineer groups, fire brigades, nursing and first-aid, operation of water and power supply in installations etc.

(d) Promote communal harmony and give assistance to the administration in protecting weaker sections of the Society.

(e) Participate in socio-economic and welfare activities such as adult education, health and hygiene, development schemes and such other tasks as are deemed useful."

9. Himachal Pradesh - Home Guards Prior to reorganization of the State of Himachal Pradesh i.e. 1st November, 1966, the Bombay Home Guards Act, 1947 was in force in some parts of the State. In other areas, the East Punjab Volunteer Corps Act, 1947 was in force. The East Punjab Voluntary Corps Act, 1947 which came into effect 8th December, 1947 makes it clear that the said Act was enacted to provide for constitution of volunteer corps for the whole State of Punjab. The Bombay Home Guards Act, 1947 also makes it clear that the said Act was enacted to provide voluntary organization for use in emergencies and for other purposes in the State of Bombay.

The Bombay Home Guards Act, 1947 and East Punjab Volunteer Corps Act, 1947 to the extent they were applicable in the State were repealed by "the Himachal Pradesh Home Guards Act, 1968" extending it to the whole State of Himachal Pradesh. Section 4 relates to constitution of volunteer body called the Home Guards and reads as follows:-

"4. (1) The Government shall, by notification, constitute for the State of Himachal Pradesh a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property, the public safety and the maintenance of the essential services as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder:

Provided that the Government may, by notification, divide the State of Himachal Pradesh into two or more areas and appoint a Commandant for each such area.

(2) The Administration and command of the Home Guards constituted under sub-section (1) for any area shall, under the overall command and control of the Commandant General, be vested in the Commandant who shall be appointed by the Government:

Provided that the Commandant may, with the approval of the Commandant General, delegate such administrative and disciplinary functions as may be necessary for the efficient functioning of the organization, to any officer subordinate to him.

(3) The general supervision and control of the Home Guards throughout Himachal Pradesh shall vest in the Commandant General which shall be appointed by the Government.

(4) Until a Commandant is appointed in an area under sub-section (1) the Commandant General may also exercise the powers and perform the functions assigned to the Commandant by or under this Act."

Section 5(1) deals with appointment of members of the Home Guards and reads as follows:-

"5.(1) Subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may, from time to time, be determined by the Government, and may appoint any such member to any office of command in the Home Guards under him."

From Section 5(1) we find that only persons who are fit and willing to serve are eligible to be appointed as Home Guards. As per Section 5(4) a member of the Home Guards are required to serve the Home Guards organization for a period of three years which may be extended for further period.

10. Himachal Pradesh Home Guards Rules, 1971 In exercise of the powers conferred by section 14 of the Himachal Pradesh Home Guard Act, 1968, the Himachal Pradesh Home Guards Rules, 1971 was enacted. Rule 2(4) defines "Home Guards Organization" as the Himachal Pradesh Home Guards constituted under Section 4(1) of the Act i.e. Volunteer body. Section 2(5) and Section 2(6) define "Member of Home Guards" and "Honorary Home Guards" respectively as under:

"2.(5) "Member of Home Guards" means a member appointed under section 5(1) of the Act, whether a part-time or a whole time volunteer or a rank holder.

(6) "Honorary Home Guards" means a Home Guards volunteer called under the Act."

The age limit prescribed under Rule 3(a) is between 18 years and 50 years. Rule 6 stipulates Home Guards constituted under Section 4 will be a Battalion, comprising of a group of companies under the command and control of a Commandant. Rule 6(i)(b) stipulates that unless otherwise

sanctioned by the State Government, the officers of the Company will be Honorary Rank holders and the Company can have only such additional paid staff as may be sanctioned by the State Government. The relevant portion of Rule 6(i)(b) reads as under:

"6.(i) The Home Guards constituted under Section 4 of the Act, will be a Battalion, comprising of a group of Companies under the command and control of a Commandant who shall be assisted by such executive, instructional and clerical paid staff as may be sanctioned by the Government:-

(a) * * * *

(b) The overall strength of a company shall be 110. Unless otherwise sanctioned by the State Government, the officers of the Company will be Honorary Rank holders. The Company can have such additional paid staff as may be sanctioned by the State Government from time to time.

(ii) The honorary officers of the Company shall be paid such honoraria and allowances as laid-down in the succeeding paragraphs of these rules.

(iii) The Commandant General will have powers to create the required number of the honorary posts.

(iv) The Commandant General or any authority prescribed by him shall have powers to appoint any member of the Home Guards to post referred to in

(iii) above under his command."

Rule 13 makes it clear that the Home Guards rendering service as volunteers are entitled to such allowances and honoraria as specified therein and reads as follows:

"13.Conditions of service- (i) The Home Guards shall be liable to serve anywhere within Himachal Pradesh. Those who volunteer for duties outside Himachal Pradesh may be drafted for the purpose as and when required.

(ii) The Home Guards employed for whole time duty, other than the Honorary Home Guards, will receive pay and allowances equivalent to their counterparts in the Police Department of equal rank. The equivalency of rank is given in Appendix 'B'.

(iii)The Honorary Home Guards shall be voluntary workers entitled to such allowances and honoraria as specified hereunder. They shall also be provided free accommodation wherever available when called for duty.

Notwithstanding anything contained in Himachal Pradesh Home Guards Rules, 1962, if any, free accommodation was provided to them before coming into force of these Rules, no recovery will be made from them on this account.

(a) Duty allowance: All honorary officers and members of Home Guards shall be paid a duty allowance of Rs. 3/- per day when called under Section 8(1) of the Home Guards Act-for Operational duty for six hours or more.

(b) Camp allowance: If the place of duty is more than 8 K.m. beyond the Company or Independent Platoon headquarter as fixed by the Commandant General, a sum of Rs. 1/- per day will be given in addition to the duty allowances to the honorary Officers and members of the Home Guards.

(c) Out of Pocket allowance:- When honorary Officers and men of Home Guards are called for training or duty for less than six hours, they shall be paid an out of pocket allowance of Rs. 1/- per day instead of the duty allowance of Rs. 3/-.

(d) Traveling allowance: (i) Honorary Officers and the members of the Home Guards shall be entitled to traveling and duty allowances on the scales as may be sanctioned by the State Government from time to time.

(e) Any Other allowance as may be sanctioned by the Government from time to time.

(f) Honoraria: The Honorary Home Guards Officers will be given an honoraria for performing short-time instructional and administrative duties at the following rates per mensem provided they perform such duties during the month.

|Rs.40 |
|Rs.30 |

|
|
|Major Quarter Master Havildars|Rs.15 |
|Clerk and Platoon Havildar | |

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(g) All members of the reserve force when called out under Section 8 of the Act will be treated as Home Guards on duty and all provisions of the Act and these rules will apply to them.

(iv) No prosecution shall be instituted against any Home Guard in respect of any thing done or purporting to be done by him in the discharge of his duties as a Home Guard except with the prior sanction of the State Government or such other Officer as empowered by the State Government in this behalf."

There are other benefits which are granted under Rule 15. In case if any member of the Home Guards suffers any injury while undergoing training or on duty, he is entitled to disability allowance or compensation depending upon the nature of injury. In case of death of Home Guard, as a result of injuries sustained while on duty or on training, family pension and children allowances are also payable. Relevant portion of Rule 15 reads as under:

"15. If any member of the Home Guards suffer any damage to his person or property while undergoing training or on duty, and he does not cause it by his own negligence or willful act or omission of the provisions of this Act and Rules or directions issued by superior Officer, he shall be paid compensation in the form of temporary allowance, disability pension, family pension and children allowances as the case may be, on the following terms and conditions:-

Temporary Allowance- If any Home Guards is incapacitated for work for a period of 3 days or more he shall be paid temporary disability allowance for the period of disablement at the rate of Rs. 30 per month payable at half monthly intervals as Rs. 15.

Where an injury sustained by a Home Guard causes him serious and prolonged or permanent disablement, he shall be awarded compensation at the rates mentioned below; The amount depending on the percentage of disablement:-

Provided that where the disablement is not more than 50% and the injured Home Guard is not debarred from the means of his livelihood, the amount of disablement pension shall be substituted by a lump sum payment calculated at 70 times of the monthly payments specified in the foregoing schedule.

(iii) In case of death of a Home Guard, as a result of injuries sustained while on duty or training, a family pension and children allowances shall be payable in accordance with the following:-

(a) A family pension of Rs.20 per month to his legally wedded wife and in case the incumbent may have more than one legally wedded wife, then this rate of provision of Rs.20 will be distributed equally and an allowance of Rs.5 per month to each of his legitimate child in case no family pension is being paid each child will get an allowance of Rs.7.50 per month:

(i) x x x

(ii) x x x

(b) For calculating the amount of injury, the opinion of the authorized Medical Officer shall be legal and final. The authorized Medical Officer, in this case means any Civil Doctor in the service of the Government not below the rank of Class-I."

11. Himachal Pradesh Home Guards (Amendment) Act, 2002 Himachal Pradesh Home Guards Act, 1968 was amended by the Himachal Pradesh Home Guard (Amendment) Act, 2002. In Section 4 of the Himachal Pradesh Home Guards Act, 1968 in place of the word 'members', the word 'volunteers' was substituted and in Section 5 for the words "appointment of members" the words "enrollment of volunteers" were substituted. Similarly for the words "appoint" and "appointment" the words "enroll" and "enrollment" were substituted respectively. Even if we do not take into consideration the Amendment Act, 2002, from the aforesaid background the following fact emerges:

In India on 6th December, 1956 Home Guards were raised in Bombay as a volunteer organization by the Bombay Home Guards Act, 1947 to provide a volunteer organization for use in emergencies. The Bombay Act was applicable in the part of the State of Himachal Pradesh. The East Punjab Corps Act, 1947 came into force since 8th December, 1947 to provide for constitution of volunteer corps. This Act was applicable in the remaining part of the Himachal Pradesh.

The Bombay Home Guards Act, 1947 and East Punjab Corps Act, 1947 to the extent they were applicable in the State of Himachal Pradesh were repealed by Himachal Pradesh Home Guards Act, 1968.

Under Section 4(1) of Himachal Pradesh Home Guards Act, 1968 a volunteer body was constituted called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property, the public safety and the maintenance of essential services as may be assigned to them.

Rule 2 of Himachal Pradesh Home Guard Rules, 1971 deals with Member of Home Guards and Honorary Home Guards.

Rule 6(ii) of the said Rules deals with honorary officers of the Company were to be paid honoraria and allowances.

Rule 13 of the said Rules stipulates that the volunteers duties outside the State are entitled for certain allowances mentioned therein. Thus we find that the Home Guard in Himachal Pradesh is a volunteer body and its members are volunteers entitled for allowances, they are not entitled to any salary.

12. State of Punjab - Home Guards:

The East Punjab Volunteers Corps. Act, 1947 was enacted and published in the East Punjab Gazette, Extra-ordinary on 8th December, 1947 (East Punjab Act No.VIII of 1947) to provide for the constitution of volunteers Corps. It was amended vide Punjab Act 42 of 1960 and was titled as "Punjab Home Guards) Act, 1947. Under Section 9 of the said Act, the State Government is empowered to frame rules, which reads as follows:

"9.The State Government may make rules consistent with this act.

Providing for the exercise of control by officers of the Police force over members of the Punjab (Home Guards), when acting directly in aid of the Police force.

Regulating the organization, appointment, conditions of service, duties, discipline, arms, accoutrement and clothing of members of Punjab (Home Guards) and the manner in which they may be called out for service;

Conferring of member of Punjab (Home Guards) according to their office any power, other than magisterial or judicial power exercisable by any person under any law for the time being in force; and Generally for giving effect to the provision of this Act."

The Punjab Home Guard Rules, 1963 In exercise of the power conferred by Section 9 of the Punjab Home Guards Act, 1947, the Punjab Home Guards Rules, 1963 was enacted by notification dated 4th September, 1963. Under Rule 2(c) of the said Rules the designated post of officers notified as Gazetted by Government has been shown as follows:

"2. Definitions.-In these rules, unless the context otherwise requires,-

(c) 'Gazetted Officer' means an officer of the status specified in column (1) below in the case of Home Guards Unit I and in column (2) in the case of Home Guards Unit II, and includes an officer of the status notified as Gazetted by the Government:-

Rule 2(h) deals with Member of Home Guards including NCO and Non Gazetted Officer as follows:

"(h) 'member' means a person appointed as member of the Home Guards under section 3 of the Act;

(i) 'N.C.Os' means Non Commissioned Officers from Sub-Section Leader to Havildar;

(j) 'Non Gazetted Officer' means an officer of the status specified in column (1) below in the case of Home Guards Unit I and in column (2) in the case of Home Guards Unit II and includes an officer of the status declared as non-gazetted by an order of the Government:-

No fixed strength of Unit of Home Guards has been given therein and the same has to be fixed by the Government from time to time. Rule 10 deals with preference to ex-soldiers and ex-policemen while enlisting members. We find that even an employee of the State Government can be member of the Home Guard under Rule 11. Rule 10 and Rule 11 read as follows:

"10. Preference to ex-soldiers and ex-policemen. [Section 9(b)]- In enlisting members preference shall be given to trained ex-soldiers, ex- I.N.A. personnel, ex-policemen and National Cadet Corps trained personnel.

11. Employee Members.[Section 9(b)]- Such Government employees or other employees as could be made available by their respective employers in the case of emergency may be enrolled as supernumerary or regular members with the permission of the Head of the Office in the case of Government employees and the employer in the case of other employees."

Under Rule 14, Pay and allowance if any admissible to the members including gazetted and non-gazetted Officers shall be determined by the Government from time to time. Rule 6 directs that the declaration of Enrolment has to be given by a member. The form of declaration is given in Appendix A which is as follows:

APPENDIX 'A' (See rule 6)

(a) Enrolment Form

1. Name:

2. Father's Name:

3. Home Address:

a) Village

b) Post Office

c) Police Station

d) Railway Station

e) District

4. Age:

5. Profession:

6. Academic qualifications:

7. Present occupation and where employed with complete address;

8. Whether convicted by any criminal court?

9. Are you willing to be enrolled in the Home Guards Unit I or Home Guards Unit II?

10. Are you prepared to serve when called for duty in case of emergency?

11. Have you ever served in I.A., I.N.A., I.T.F. Police, etc

12. Are you a member of the Army reserve force?

13. What is your hobby?

14. Any other information you would like to give.

(b) Declaration of Acceptance for Enrolment I, _____, solemnly declare that the answers I have given to the questions in this form are true and I am willing to fulfill the engagements made.

Signature Certified that the applicant understands and agrees to the conditions of enrolment.

(Signature of Enrolling Officer)

(c) Form of Declaration I, _____, son of _____, resident of _____, do hereby solemnly declare, and affirm that as a member of the Punjab Home Guards to which I have volunteered after dully understanding the responsibilities and duties which its membership imposes upon me, I will honestly and faithfully discharge my duty without fear or favour irrespective of caste and creed.

Signature Address _____ Enrolment _____
as _____ is approved.

(Signature of Enrollment Officer)"

In exercise of the power conferred by Section 9 of the Punjab Home Guards Act, 1947 "the Punjab Home Guards and Civil Defence (Class II) Service Rules, 1988" "The Punjab Home Guard and Civil Defence (Class I) Service Rules, 1988" were framed. Though the aforesaid rules are not applicable to the present cases it is necessary to notice the difference between the Punjab Home Guard Rules, 1963 and 1988 Rules.

In Appendix 'A' of Class II Service Rules, the total strength posts both permanent and temporary and the Regular scale of pay to which the officers are entitled have also been shown therein. Similarly, an Appendix to Class I Service Rules also total no. of permanent and temporary posts has been shown along with the scale of pay. No such strength of post and scale of pay have been shown for members of Home Guards who were guided by the Punjab Home Guard Rules, 1963.

From the Punjab Home Guards Act, 1947 we find that the Act has been enacted to provide for the constitution of volunteers Corps and therefore we hold that the members of the Home Guards of Punjab under the Punjab Home Guards Rules are volunteers and are not regular employees of the State.

13. N.C.T. of Delhi - Home Guards:

The Bombay Home Guards Act, 1947 was enacted to provide a volunteer organization for use in emergencies and for other purposes in the State of Bombay. It was extended to the Union Territory of Delhi. Relevant portion of Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi reads as follows:

"The Bombay Home Guards Act, 1947 (Bombay Act No.III of 1947)As Extended to the Union Territory of Delhi Bombay Act No.III of 1947.

(The Bombay Home Guards Act, 1947) An Act to provide for the constitution of Home Guards Whereas it is expedient to provide a volunteer organization for use in emergencies and for the purposes in the State of Bombay. It is hereby enacted as follows:-

1. Short title, extent and commencement-

- (1) This Act may be called the Bombay Home Guards Act, 1947.
- (2) It extends to the whole of the Union Territory of Delhi.
- (3) It shall come into force at once.

2. Constitution of Home Guards and appointment of Commandant General and Commandant (1) The Chief Commissioner of Delhi shall constitute for the Union Territory of Delhi a volunteer body called the Home Guards, the

members of which shall discharge such functions and duties in relation to the protection of persons the security of property and the public safety as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.

Provided that the Chief Commissioner of Delhi may, by notification in the Official Gazette, divide the Union Territory of Delhi into two or more areas and constitute such a volunteer body for each such area."

Section 3 of the said Act deals with appointment of members of Home Guards. Under Section 8 the Chief Commissioner of Delhi is empowered to make rules consistent with the Act regarding the organization, appointment, conditions of service, etc. of members of Home Guards.

Delhi Home Guards Rules, 1959 In exercise of the powers conferred by Section 8 of the Bombay Home Guards Act, 1947, as extended to the Union Territory of Delhi, the Chief Commissioner of Delhi made Delhi Home Guard Rules, 1959. Minimum age of 20 years and maximum age of 60 years has been prescribed therein for being members of Home Guards. Rule 8 prescribes term of office which is 3 years and Rule 9 defines limit of age for a member of the Home Guards. The said Rules read as follows:

"8. Term of Office - The term of office of a member of the Home Guards shall be three years.

Provided that the appointment of any such member may, at any time, be terminated by the Commandant General or the Commandant, as the case may be, before the expiry of the term of office -

(a) by giving one month's notice, or

(b) without such notice, if such member is found to be medically unfit to continue as a member of Home Guards.

9. Limit of age for a member of the Home Guards - A member of the Home Guards may continue to be such member until he attains the age of sixty years.

Provided that the Commandant General or the Commandant may relax the age limit in suitable cases."

A member of the Home Guards who suffers any damage to his person or property while under training or on duty is not entitled for any other benefits except compensation under Rule 18, which reads as follows: "18. Compensation - If a member of the Home Guards suffers any damage to his person or property while under training or on duty, he shall be paid such compensation as may be determined by the Chief Commissioner; provided that such damage is not caused by his own negligence or willful act omission in contravention of any of the provisions of the Act or rules made thereunder or orders or directions issued by his superior officers."

From the Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi, the following fact emerges:

The Home Guard is a volunteer organization for use in emergency and for the purpose of State Chief Commissioner of Delhi by notification can divide the Union Territory of Delhi into two or more areas and constitute a volunteer body for each such area.

The term of office of Home Guards is three years and maximum age limit of appointment is upto the age of sixty years.

Therefore, we find that the Home Guards of N.C.T. of Delhi are volunteers and are not in any service of the State.

14. Learned counsel for the parties relied upon certain decisions of this Court, as referred below:

(i) The case of State of W.B. and Others v. Pantha Chatterjee and others, (2003) 6 SCC 469 was related to part time Border Wing Home Guards recruited for patrolling the border and checking infiltration. Initially they were appointed as volunteers for three months but were retained for 14 long years. Being dissatisfied with the pitiable conditions of service under which they had been working and the nominal emoluments paid to them, they preferred writ petitions before the Calcutta High Court complaining that they were being discriminated vis--vis other regular Border Wing Home Guards of West Bengal and the Border Security Force Personnel, as they were performing similar duties and discharging same responsibilities. The learned Single Judge on considering the material on the record, came to the conclusion that there is a relationship of master and servant between the Border Wing Home Guards and the State of West Bengal, who is their

appointing authority. The learned Single Judge held that so far as the nature of the employment is concerned i.e. whether casual or voluntary, in view of memo dated 11th October, 1985 issued by the Government of West Bengal the writ petitioners could not be treated as volunteers engaged in casual nature of work so as to be termed as part-time staff of the Government of West Bengal. They were also held to be holders of civil posts under Article 311 of the Constitution. Referring certain case laws with regard to daily wage casual workers, the Single Judge further held that they are entitled for "equal pay for equal work" i.e. the same benefits as admissible to the permanent Border Wing Home Guards. In an appeal filed by the State against the aforesaid decision of the Single Judge, this Court upheld the same. This Court held:

"16. In the present case, we have seen that there has not been any dispute about the nature of duties of the two sets of BWHG. Ordinarily, no doubt, they could claim benefits only in accordance with the Scheme under which they were engaged. But as held earlier, the Scheme was not implemented in its terms as framed. Hence, the distinction sought to be drawn between the part-time and the permanent BWHG had obliterated and both worked together shoulder to shoulder under similar situations and circumstances and discharged same duties. Once the Scheme as framed failed to be implemented as such by those at the helm of the affairs and the part-time BWHG were continued under the authority of those vested with such power to continue them, it is not open to the State Government or the Central Government to deny them the same benefits as admissible to members of the permanent staff of BWHG. The decisions reported in *Karnataka State Private College Stop-gap Lecturers Assn. v. State of Karnataka*⁹ and *Govt. of India v. Court Liquidator's Employees Assn.*¹⁰ may also be beneficially referred to.

17. On the basis of the Scheme, as promulgated by the Government of India, the State Government with the sanction of the Governor of West Bengal raised the battalion of Border Wing Home Guards, as indicated earlier and they were to be paid from a given head of expenditure of the State Government. The Scheme, however, makes it clear that the expenditure incurred would be reimbursed by the Central Government. The Central Government should not and cannot get out of this undertaking. It is no doubt true that the State of West Bengal being in the position of an employer of the respondent petitioners, owes the primary responsibility of making all the payments on account of salary, allowances and other perquisites to them as

admissible to the permanent staff of the Border Wing Home Guards but this [pic]burden of expenditure must be ultimately borne by the Central Government. The petitioners have been guarding the borders of the country assisting BSF in checking the infiltration from across the border. The petitioners have been working and discharging their duties under the control of the authorities of the Border Security Force. We also find that the Central Government cannot shed its responsibility by raising a lame plea that it was because of the State Government that voluntary character of the engagement of the writ petitioners, as per the Scheme, was lost. In our view, the primary responsibility for deployment for such a long duration squarely lies upon the Central Government. The deployment was envisaged to be for a period of 3 months, to be continued, only if necessary as may be assessed by the authorities of the Border Security Force. The authority to continue the deployment beyond the period of 3 months was entrusted to the responsible authorities of the Border Security Force by the Central Government itself. There is no dispute that the writ petitioners were continued accordingly. In such a situation the State Government hardly had any choice in the matter to cease or withdraw the deployment engaged in the job of patrolling of borders under operational control of BSF.

18. In the circumstances indicated above, the High Court has rightly come to the conclusion that the so-called part-time Border Wing Home Guards could not be treated differently from the permanent staff of BWHG. They have been rightly accorded parity with them."

15. Learned counsel appearing on behalf of the appellants had taken plea that the appellants have been working as Home Guards for period ranging from 10 to 30 years and therefore in view of the decision in *State of W.B. and Others v. Pantha Chatterjee and others*, (2003) 6 SCC 469 they are also entitled for regularization of their services. However, such contention has been opposed by the learned counsel for the State(s). They relied upon another decision of this Court in *State of Manipur and another v. Ksh. Moirangninthou Singh and others*, (2007) 10 SCC 544. In the said case, the members of the Manipur Home Guards filed different writ petitions in the Gauhati High Court inter alia praying that their services be regularized in the Home Guards and that they be given regular pay scales. In the said case, the Court noticed that Home Guards have been constituted as a voluntary organization for service in emergencies. Their initial appointment was for three 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. The Court

further noticed that there was a age limit of 50 years. In the said case, the Court held:

"7. We are of the opinion that in view of the Constitution Bench judgment of this Court in *Secy., State of Karnataka v. Umadevi* (3)¹ this Court cannot direct regularisation in service. Since the court has no power to direct regularisation, it also follows that it has no power to direct grant of benefits payable to the regular employees."

The Court further held:

"11. A perusal of the provisions of the Home Guards Act and the Rules show that the Home Guards was meant to be a reserve force which was to be utilised in emergencies, but it was not a service like the police, paramilitary 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 v. Govt. of NCT of Delhi*."

16. In *Union of India v. Parul Debnath*, (2009) 14 SCC 173, the Court considered the Andaman and Nicobar Islands Home Guard Regulations, 1964. In terms of Regulation 16 of the said Regulations, the then Chief Commissioner (now Lieutenant Governor), Andaman and Nicobar Islands, framed "the Andaman and Nicobar Home Guard Rules, 1965" for providing a voluntary organization named as "Andaman and Nicobar Islands Home Guard Organization" for use in emergency and for other purposes in the Union Territory of Andaman and Nicobar Islands. The respondents therein claimed to be continuously performing the duties of a regular nature. They moved before the Central Administrative Tribunal, Calcutta Bench, Circuit Bench at Port Blair seeking equal pay for equal work with regular Home Guards or for regularization of their service. The said original application was disposed of by the Tribunal by common order dated 16th September, 2002 inter alia, with a direction to the State authorities to consider the framing of an appropriate scheme. Writ petitions filed against the said order of Tribunal was disposed of by the learned Single Judge directing the appropriate authority to frame a scheme as directed by the Tribunal and while doing so to take into consideration the principles laid down in *Pantha Chatterjee* case. The scheme framed by the state authorities providing reservation of 20% of the vacant posts to accommodate the respondents in a phased manner, while setting apart 80% of the vacancies for other parties, was later challenged before learned Single Judge by filing a writ petition. The learned Single Judge dismissed the same and on appeal, Division Bench reversed the judgment of learned Single Judge and set aside the

scheme framed. In an appeal challenging the said decision of the Division Bench, this Court upheld the same and held as follows:

"42. In our view, the Division Bench has very correctly observed that the intention of the Tribunal and the courts was that the benefits to be given to the writ petitioners (the respondents herein) should be extended to all of them uniformly and without making any discrimination. The very fact that some of the respondents would be regularised, while the others would have to wait till the next vacancies arose or the possibility that some of the candidates who were otherwise eligible, might not even be absorbed, was never the intention when the directions were given to frame a scheme for absorption of the respondents. In our view, such a course of action appears to have been adopted to negate the effect of the earlier orders so that the respondents as a whole were deprived of the benefit of absorption and the further benefit of "equal pay for equal work", as was indicated in Pantha Chatterjee case¹.

43. As a direct consequence of the disparity in the pay structure of the respondents, who were to be absorbed in stages, their post-retiral benefits [pic]would be affected and would not be uniform, which was also not intended when directions were given for framing of a scheme to absorb the said respondents.

44. Clause (h) of the scheme, which has been commented upon by the Division Bench of the High Court, denies to the respondents any other benefit other than those specified in the scheme, thereby creating a class within a class, which is not only contrary to Article 16 of the Constitution but is also contrary to the directions given by the High Court regarding absorption of the existing Home Guards. Even Clause (i) is arbitrary and discriminatory in nature as it contemplates a situation where some of the respondents who were otherwise eligible, may not at all be absorbed in the regular administration which would disentitle them to the benefits of the directions given by the Central Administrative Tribunal and the High Court.

45. On the question of creation of supernumerary posts, it may be indicated that while it is no doubt true that creation of posts is the prerogative of the executive, in order to meet certain special exigencies such a course of action has been resorted to by this Court and in our view this is one such case where such a direction does not need any intervention."

17. In the cases before us though some of the Home Guards (Grah Rakshak) produced their appointment letters to show that they are serving as Platoon Havaldar for 10 to 28 years, we find that they have been enrolled and there is no appointment on regular basis. They have never been paid salary/wages and there is no provision to make any payment of salary/wages other than the duty allowance and other allowances.

18. In the Form filled up by the Home Guards volunteers of each State, the Home Guards have specifically mentioned that they undertake to serve as a member of the Home Guards at any time and place in India if they are called out for training or duty.

This is evident from Form I of Himachal Pradesh Home Guards Act, 1968 which shows that they are entitled for temporary allowance and in case of injury sustained or disability occurred during the duty they are entitled for disability pension.

19. Similar is the case of Bombay Home Guards, who have been appointed as volunteers Home Guards under the Act. They also have given declaration that they have volunteered as a member of the Home Guard.

20. The Home Guards of N.C.T. of Delhi also have been appointed to the organization which is volunteer body under the Act. Provision discussed above makes it clear that Chief Commissioner of Delhi only engage volunteers in the Home Guards. The Home Guards being volunteer body in the N.C.T. of Delhi, the appellants-Home Guards of Delhi cannot be claimed to be regular appointees.

21. It is not the case of the State Government that enrollment/appointments of the Home Guards were backdoor engagement and illegal made in violation of Articles 14 and 16 of the Constitution of India. Therefore, the decision of this Court in Umadevi(3) is not applicable in the case of the appellants-Home Guards. Admittedly, there is no concept of wages. These volunteers are paid duty allowance and other allowances to which they are entitled. There is nothing on the record to suggest that they performed duties through out the year.

On the other hand, it is the specific case of the State that as and when there is requirement they were called for duty and otherwise they remained in their homes. Therefore, in absence of any details about continuity of service, month to month basis or year to year basis, the duties and responsibilities

performed by them through out the year can neither be equated with that of police personnel.

22. In view of the discussion made above, no relief can be granted to the appellants either regularization of services or grant of regular appointments hence no interference is called for against the judgments passed by the Himachal Pradesh, Punjab and Delhi High Courts. However, taking into consideration the fact that Home Guards are used during the emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel, we are of the view that the State Government should pay them the duty allowance at such rates, total of which 30 days (a month) comes to minimum of the pay to which the police personnel of State are entitled. It is expected that the State Governments shall pass appropriate orders in terms of aforesaid observation on an early date preferably within three months.

23. The appeals are disposed of with the aforesaid observation. No costs.