

GAHC020003862022



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : WP(C)/143/2022

SHRI. MIGHISHE
SEPOY, HOME GUARDS,
OFFICE OF THE DISTRICT HOME COMMANDANT,
HOME GUARDS, KOHIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 2 ORS
REPRESENTED BY THE HOME COMMISSIONER,
TO THE GOVERNMENT OF NAGALAND, CIVIL SECRETARIAT, KOHIMA,
NAGALAND

2:THE DIRECTOR

CIVIL DEFENSE AND COMMANDANT GENERAL
HOME GUARDS
NAGALAND
KOHIMA

3:THE DISTRICT COMMANDANT

HOME GUARDS
KOHIMA
NAGALAN

Advocate for the Petitioner : JOSHUA SHEQI

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

22.05.2024

(S.K. Medhi, J.)

Heard Shri Joshua Sheqi, learned counsel for the petitioner whereas the State respondents are represented by Ms. V. Suokhrie, learned Additional Advocate General, Nagaland.

2. The present writ petition has been instituted challenging the *vires* of the Nagaland Home Guards Service Rules, 2015 (hereinafter the Rules of 2015). For the sake of clarity, the prayers in the writ petition is extracted hereinbelow-

"In the premises aforesaid, it is mot respectfully prayed that Your Lordships would graciously be pleased to admit this petition/ application, call for the records, issue a rule calling upon the respondents to show cause/causes as to why a writ of certiorari and/or mandamus and/or any other appropriate writ, order or direction should not be issued and upon cause or causes being shown be pleased to make the rule absolute in the following terms.

A. Quash and set aside the Nagaland Home Guards Service Rule, 2015 for being unconstitutional.

B. Direct the State respondents to amend the rules and include compensation clause like other States Home Guards Service Rules, more particularly the Himachal Pradesh Home Guards Service Rule.

C. Direct the State respondents to amend the rules to regularize the service of the petitioner to the post of

Bandman or Quarter Guardman or any Grade IV post and in consideration of his 19 years of service.

D. Allow the petitioner to go on voluntary pension with all the consequential benefits w.e.f. 2003 considering the extraordinary circumstance of the case of the petitioner, in a speaking Order on his service being regularized.

And/or pass any such further or other order/orders, as Your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. The projected case in the petition is that he is a casual / temporary / Home Guards Sepoy / Constable, who is serving under the Department of Home Guards to which he was appointed in the early part of 2003. In course of his service, the petitioner was also injured by an accidental shot fired by one of his colleague. The petitioner had filed representation for grant of compensation followed by filing a writ petition in this Court being WP(C)/74(K)/2020. The aforesaid writ petition was disposed of by directing consideration of the representation of the petitioner. However, since the same was not done, the petitioner had filed another writ petition being WP(C)/160/2020 for regularization of his service and to allow him to go on voluntary retirement with consequential benefits.

4. The learned counsel for the petitioner has submitted that in the pleadings filed by the State Government, it has been contended that the aforesaid Rules of 2015 not being challenged, no relief can be granted to him. Accordingly, the present writ petition has been

filed challenging the *vires* of the said Rules of 2015.

5. The learned counsel for the petitioner has submitted that the issue involved though presently concerns the petitioner is also of general importance wherein the fate of Home Guards are left uncertain in the event of injuries sustained by them in course of their duties.

6. *Per contra*, Ms. Suokhrie, learned Additional Advocate General, Nagaland has submitted that the services of the petitioner are not under the Rules of 2015 and therefore he would not have the *locus* to challenge the *vires* of the said Rules. By drawing the attention of this Court to the affidavit-in-opposition filed by the State respondents, the learned State Counsel has submitted that the services of the petitioner are voluntary services and are also not continuous. The projection made that the petitioner is in continuous service is also disputed by stating that after a certain period, there is a break in service. It is also pointed out that the tenure of such services is specified from 2nd January to 31st December of that year with a break of a day in the services. Since that aspect of having a break in service is not the subject matter of challenge in this writ petition, this Court will not embark upon the said issue.

7. The learned counsel for the petitioner in his rejoinder has however submitted that the State respondents cannot be allowed to have different stand in the proceedings before this Court. It is submitted that such approach is hit by the doctrine of approbation and reprobation and the State being a welfare State has to take a consistent and reasonable stand.

8. On consideration of the submissions and on perusal of the

materials on record, this Court has examined the concerned Rules of 2015. Under Rule 4 which deals with the constitution of the service, the persons who are to be governed by the said service are given. The said Rule also refers to the post specified in Schedule 1. For ready reference, Rule 4 is extracted hereinbelow-

"4. **Constitution of the Service:**

The service shall constitute of the following persons, namely:-

(a) Persons who, at the commencement of these rules are holding substantively the posts specified in the Scheduled 1.

(b) Persons recruited to the service in accordance with the provisions of these rules."

9. This Court has also examined the Schedule appended thereto. Though the heading refers to Rules of '2013', it appears that it is due to inadvertence as it is the same authority which had issued the Schedule along with the Rules of 2015. The posts which have been mentioned do not cover the post held by the petitioner which is admittedly on voluntary nature.

10. This Court is of the considered view that unless the person is affected by a set of Rules, he would not have the *locus* to challenge the *vires* of such Rules. Therefore, on the aspect of want of *locus*, this writ petition is held to be not maintainable and accordingly dismissed.

11. However, dismissal of this writ petition would not affect the

claim sought to be espoused in WP(C)/160/2020 which is stated to be pending. It is further made clear that the State respondents would be precluded from raising the issue that such claim in WP(C)/160/2020 is not maintainable because the Rules of 2015 have not been challenged.

JUDGE

JUDGE

Comparing Assistant