



W.P.No.18739 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.18739 of 2020

and

W.M.P.No.23274 of 2020

1.A.Anthony Das
2.P.Alexander
3.K.Saravanan
4.J.Vasu Devan
5.S.Johndaniel Stanley

...Petitioners

-Vs-

1.The Union of India
Rep by its Directorate General Fire Services,
Civil Defence and Home Guards,
Ministry of Home Affairs,
East Block, VII,
Level-7, R.K.Puram,
New Delhi – 110 066.

2.The Additional Director General of Police,
Home Guard,
DGP Office,
Mylapore,
Chennai – 600 004.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Declaration, to declare the act of commencing fresh recruitments to the post of Home Guards in the Districts of State of Tamil Nadu by the second respondent as unwarranted, unconstitutional without ensuring full employment to the petitioners for a minimum of 8 hours per day and 30 days a month on par with other States and pass such further orders.

For Petitioners	:	Mr.R.Sreedhar
For R1	:	Mr.M.Sathyan ACGSC
For R2	:	Mr.M.Rajendiran Additional Government Pleader

ORDER

This writ petition has been filed seeking to declare the act of commencing fresh recruitments to the post of Home Guards in the Districts of the State of Tamil Nadu by the second respondent as unwarranted and unconstitutional without ensuring full employment for the petitioners for a minimum of 8 hours per day and 30 days a month on par with other States.

2. The case of the petitioners are as follows:



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2.1 The petitioners joined the service of the Home Guard in the Tamil Nadu Police Home Guard Department on 26.07.2010 and it is a voluntary force raised by the States and Union Territories under a broad pattern and policy laid down by the Ministry of Home Affairs and their service conditions are governed by the Tamil Nadu Home Guard Rules, 1963. The Home Guards are utilized to supplement the State / UT police force for maintaining law and order, traffic control, protection of public property, guarding borders and election-related work.

2.2 The Hon'ble Supreme Court had passed an order in Civil Appeal No.2759 of 2015 passed against a batch of SLP's filed by the Home Guards pertaining to the States of Himachal Pradesh, Punjab and Delhi who were seeking for regular appointments and the Hon'ble Apex Court had passed the following order, which is extracted hereunder:

"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



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State Governments shall pass appropriate orders in terms of aforesaid observation on an early date preferably within three months."

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In pursuance of the order passed by the Hon'ble Supreme Court and on receiving various representations from various Home Guards Welfare Associations of several States, the first respondent had sent a communication dated 10.04.2018 to all the State Heads to implement the Hon'ble Supreme Court order.

2.3 The Home Department of the State of Tamil Nadu had passed a G.O.Ms.No.115 dated 19.02.2019 by enhancing the call-outs from 5 days per month to 10 days per month for Home Guards and the duty allowance was re-fixed at Rs.280/- for duties not more than 4 hours (i.e., one call-out) and Rs.560/- for duties from four hours to eight hours (i.e., two call-outs) per day. The duty allowance fixed by the second respondent is Rs.560/- for 8 hours.

2.4 However the second respondent is allowing the Home Guards only for 5 days and they are not complying with their own G.O. Now the second respondent had called for applications from the public who are between the age group of 18 to 45 years for the post of Home Guards and some of the notifications issued by the Districts are enclosed in the typed set



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of papers.

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2.5 The act of the second respondent filling the vacancy of Home Guards would not arise as the existing Home Guards are not given proper job and the petitioners are given only 4 hours per day to a maximum of 5 days per month. The second respondent is attempting to spoil the life of the youngsters by not mentioning the work hours in the notifications as nobody can survive by working for 5 days. Since all the petitioners are seeking for the same relief. Hence, a writ petition is filed.

3. Learned counsel appearing for the petitioners submitted that the act of the second respondent inviting applications for appointments of District-wise Home Guards is totally misconceived and unwarranted and the act of the second respondent in not providing adequate employees to the existing Home Guards itself is in violation of the Hon'ble Supreme Court order.

4. Learned counsel further submitted that the second respondent in order to evade enhancement of duty allowance, reduced the working hours of the petitioners which is totally unconstitutional and is in violation of Article



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14. The second respondent is very much aware that the other States are providing employment for full year but the State of Tamil Nadu is providing work only for 60 days in a year which is less than the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) which guarantees 100 days of employment in a financial year. The second respondent had miserably failed to enhance people's livelihoods on a sustained basis by developing the economic and social infrastructure. The amount paid to the Home Guards is very less when compared to the payment of the statutory minimum wage and equal wages for men and women.

5. A counter affidavit was filed by the second respondent in June 2022.

6. Learned Additional Government Pleader appearing for the second respondent would submit that the Home Guard Organization is a voluntary Organization and the members are not full time employee. The members of the Home Guard Organization are being utilized to perform certain functions performed by the regular Police. They are utilized to perform duties like Traffic Control, night patrolling, bandobust and election duties. They are not paid wages/salary and they are paid prescribed



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remuneration for the 5 days call-out duties. It is also submitted that nobody is compelled to join in Home Guard organization, as per rule 3(ii) of the Tamil Nadu Home Guard Rules, 1963, *"Every person desiring to be appointed as a member of the Home Guard shall make an application in Form 'A' to the Commissioner of Police in the city or to the Superintendent of Police in a District"*. Further, in Part -2 of said Form A, a declaration to be signed by the applicant for the effect that *"I declare that I am a citizen of India and that I desire to be enrolled as a member of the Home Guard"*.

7. Learned Additional Government Pleader further submitted that in G.O(Ms)No.115, Home (Pol.14) Department, dated: 19.02.2019, the Government has enhanced the call-outs from 5 days per month to 10 days per month for Home Guards and the duty allowance re-fixed as Rs.280/- for duties not more than 4 hours (i.e., one call out) and Rs.560/- for duties from four to eight hours (i.e., two call outs) per day.

8. Learned Additional Government Pleader contended that in the **Contempt Petition No.133 of 2016 in Civil Appeal No.2768 of 2015**, the Hon'ble Supreme Court of India vide order dated 24.05.2016, has directed that the State Government should pay to the Home Guards Personnel duty



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allowance at such rates, the total of which 30 days (a month) comes to pay (sum of basic pay, grade pay, DA and washing allowance) to which the police personnel are entitled. Since the Home Guards are State subject, pay and allowance of Home Guards are governed by the Home Guards Acts and Rules of respective States/UTs and there is no Central Act governing the Home Guards in the Country. In the case of **Loon Singh & Ors Vs. State of Rajasthan (Special Appeal Writ No.801 of 2009)** the Hon'ble High Court of Rajasthan.

9. Learned Additional Government Pleader further contended that directions laid down in the Judgment decided by the Hon'ble Supreme Court of India in **Civil Appeal No.2759 of 2015 in the case of GrahRakshak, Home Guards Welfare Association Vs State of Himachal Pradesh & Ors (2015) 6 SCC 247** has been already compiled by the Government of Tamil Nadu without any deviation and the Government has enhanced the Duty allowance from Rs. 150/- to Rs.560/- vide in G.O.Ms.No.703, Home (Pol.14) Department, dated 15.09.2017.

10. Learned Additional Government Pleader submitted that whenever vacancies arise in Home Guard, fresh recruitments are being



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conducted by the Appointing Authority i.e. Commissioners of Police in Cities and Superintendents of Police in Districts in the respective City/District. On perusal of the Unit wise strength Particulars of Tamil Nadu Home Guards as on 01.11.2020, it is observed that there are 1721 posts of Home Guard Personnel vacant in various Districts/Cities in the State and in view of the General Election to Tamil Nadu Legislative Assembly - 2021, it was necessary to fill up vacancies with suitable and eligible candidates. Hence, all the Commissioners of Police in Cities and all the Superintendents of Police in Districts were instructed to fill up the vacancies at the earliest.

11. The Tamil Nadu Home Guard strength details as on 01.06.2022 are as follows:

Sanctioned Strength		Total	Actual Strength as on 01.06.2022		Total	Vacancy		Total
Men	Women		Men	Women		Men	Women	
12817	2805					12155	2700	
		15622			14855			767

As per the Tamil Nadu Home Guards Rules, 1963, it is a voluntary citizen's force to assist the Police in the maintenance of Law and Order and to meet emergencies like floods, fires, cyclones, etc. The Home Guards Organization renders valuable assistance in the regulation of traffic, crowd



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control, maintenance of internal security and promotion of communal harmony to create awareness on health, hygiene and road safety. As on date, the sanctioned strength of Home Guards is 15622 and new recruitments are being conducted whenever vacancies arise in the existing sanctioned strength.

12. Learned Additional Government Pleader drew the attention of this Court to G.O.Ms.No.35, Home (Pol.XIV) Department, dated 05.01.2012, which deals in connection with the Special Call-Outs and allowances is reproduced below:

G.O.Ms.No.35 Home (Pol.XIV) Department dated 05.01.2012

ORDER:

In the circumstances stated by the Additional Director General of Police/Director of Civil Defence and Additional Commandant General, Home Guards and the Director General of Police in the letters second and third read above, the following amendment issued to paras 4,5,6 in G.O.(Ms) No.1130, Home (Pol.XIV) Department, dated: 26.07.2007.

Amendment

The paras No.4,5,6 in G.O.Ms. No.1130, Home (Pol.XIV) Department, dated: 26.07.2007 hereinafter read as follows:

Para 4:-

To avoid the administrative delay in office of the Director General of Police, for sanction the Duty Allowance/Special Callout allowance, the Government consider that the powers need not be vested with the Director General of Police. After careful examination, the Government have decided to delegate the said power to the Commissioner of Police in Cities/ Superintendent of Police in Districts for sanction of expenditure relating to Duty Allowance/Special Callout allowance to their Cities/Districts subject to the condition that, these delegated powers have to be exercised within the budget provision. Additional budgetary allocation will not be made as a matter of course. The Commissioner of Police in Cities and Superintendents of Police in Districts concerned are also instructed that, the delegated powers should be exercised prudently and the overall expenditure confined within the budgetary allocation for the year and no request for additional provision (unless it is for special work like elections) will be entertained.

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Correction: Nil

Assistant Commissioner of Police
Home Guards

Additional Director General of Police
Director of Civil Defence &
Addl. CMT. General Home Guards
Mylapore, Chennai - 01.

PRINCIPAL SECRETARY TO GOVERNMENT



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13. Heard both sides and perused the materials available on record.

14. In the case on hand, the petitioners were already serving in the Home Guards and their main grievance is that though the Government has passed G.O.Ms.No.115 dated 19.02.2019 by enhancing the call-outs from 5 days per month to 10 days per month for Home Guards and the duty allowance re-fixed at Rs.280/- for duties not more than 4 hours (i.e., one call-out) and Rs.560/- for duties from four hours to eight hours (i.e., two-call outs) per day. The duty allowance fixed by the second respondent is Rs.560/- for 8 hours. However the second respondent is allowing the Home Guards to work only for 5 days and the above said G.O is not complied with by the second respondent.

15. It is an admitted fact that the Home Guards is a voluntary force raised by the States and Union Territories under a broad pattern and policy laid down by the Ministry of Home Affairs and their service conditions are governed by the Tamil Nadu Home Guard Rules, 1963. The Home Guards are utilized to supplement the State / UT Police force for maintaining Law and Order, traffic control, protection of public property, guarding borders and



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election-related work and to meet emergencies like floods, fires, cyclones, etc.

The Home Guards Organization renders valuable assistance in the regulation of traffic crowd control, maintenance of internal security and promotion of communal harmony, to creates awareness on health, hygiene and road safety and also to perform duties like night patrolling, bandobust and election duties. The members of the Home Guard Organization are not full time employees and their services will be required only at the time of the above mentioned emergencies and not otherwise, like the police force. The Home Guards play a vital role by assisting the police personnel in tackling the above emergencies. Hence, whenever vacancies arise in the Home Guard, the second respondent has to go for fresh recruitments drive which are being conducted by the Appointing Authority, i.e. Commissioners of Police in Cities and Superintendents of Police in Districts in the respective City/District.

16. It is seen that the present public notice was issued in the daily newspaper in the year 2020 for recruitment of Home Guards in view of the General Election to the Tamil Nadu Legislative Assembly - 2021.

17. In view of G.O.Ms.No.115 dated 19.02.2019 the call-outs were enhanced from 5 days per month to 10 days per month for Home Guards.



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The aforesaid G.O was issued pursuant to the letter issued by the Directorate General Fire Services, Civil Defence and Home Guards, Ministry of Home Affairs, Government of India, dated 11.04.2018 to all the Chief Secretaries / Administrators of the UTs in which the State of Tamil Nadu was also mentioned, wherein it was observed that the Department related Parliament Standing Committee on Home Affairs had mentioned that most of the States have failed to implement the judgment of the Hon'ble Supreme Court on increasing the duty allowances of Home Guards to the minimum pay. G.O.Ms.No.115 was issued for enhancing the call-outs from 5 days per month to 10 days per month for Home Guards and the duty allowance re-fixed at Rs.280/- for duties not more than 4 hours (i.e., one call-out) and Rs.560/- for duties from four hours to eight hours (i.e., two call-outs) per day pursuant to the letter dated 11.04.2018.

18. Taking note of **Contempt Petition No.133 of 2016 in Civil Appeal No.2768 of 2015**, the Hon'ble Supreme Court of India vide order dated 24.05.2016 has directed that the State Government should pay to the Home Guards Personnel duty allowance at such rates, the total of which 30 days (a month) comes to pay (sum of basic pay, grade pay, DA and washing allowance) to which the police personnel are entitled. Since the Home Guards



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are State subject, pay and allowance of Home Guards are governed by the Home Guards Acts and Rules of respective States / UTs and there is no Central Act governing the Home Guards in the Country.

19. The Home Guards are appointed pursuant to the Tamil Nadu Home Guards Rules, 1963, since their services are voluntary and their duty allowance can be re-fixed by the State Government from time to time. The recruitment of the Home Guards are subject to the vacancies available and it is a prerogative discretion of the second respondent and the same cannot be interfered by this Court.

20. The recruitment notice which the petitioners have challenged is of the year 2020 and the recruitment process is completed already in not only the 5 districts mentioned by the petitioners but in the entire State according to the respondents.

21. The plea of the petitioners cannot be considered for the following reasons:

a) The aim and objectives of creating the Tamil Nadu Home Guards Force will go in vain.



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b) There will be vacancies arising out of the retirement of the Personnel every year and if no recruitment taken place the number of the Personnel will reduce drastically as a result they cannot contribute their services effectively for the citizens of the State.

c) When the number of Personnel gets reduced then the Home Guards force will not be able to assist the police effectively in maintaining law and order by the control and during big meetings and rallies.

d) The Home Guards will not be able to render a good and remarkable service during the emergencies like cyclone, floods, fire accidents and during the assembly and parliamentary elections.

e) If the Home Guards Personnel are given 8 hours of work instead of 4 hours of work then the strength of the force will remain the same as a result there will be minimal strength in the force. The aim of recruitment for new Personnel is to achieve the sanctioned strength of 15622 and to give 4 hours work per day to all the Personnel.

f) It was submitted by the second respondent that there are 375 vacancies as on date in the Home Guards Force.

g) The fresh recruitment will create job opportunities to the unemployed youths and they will also be appointed if they fulfill the eligible



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conditions stipulated in the Tamil Nadu Home Guards Rules, 1963.

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22. In view of the above facts, circumstances of the case and for the above mentioned reasons, the writ petition is liable to be dismissed.

23. In the result, **the writ petition stands dismissed with the above observations.** No costs. Consequently, connected miscellaneous petition is closed.

20.11.2024

cda

Index : Yes/No

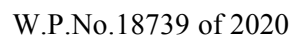
Speaking/Non Speaking order

J.SATHYA NARAYANA PRASAD, J.

cda

To

1.The Directorate General Fire Services,
The Union of India
Civil Defence and Home Guards,



Ministry of Home Affairs,
East Block, VII,
Level-7, R.K.Puram,
New Delhi – 110 066.

2. The Additional Director General of Police,
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