

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11208 of 2013

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1. Umesh Kumar S/O Ram Hriday Rai Resident Of Village- Dumra Bari Bazar,
P.S- Sitamarhi, District- Sitamarhi, Present Posted At Home Guards Force No. 187
(U), Sitamarhi.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Of Home Ministry (Special)
Department, Bihar At Patna.
2. The Inspector General Of Home Guard, Bihar At Patna.
3. The Commandant Of Home Guard, Bihar At Patna.
4. The District Commandant Officer, District- Sitamarhi.
5. The District Magistrate, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Pandey, Advocate.
For the State : Mr. S.D. Yadav, AAG 9,
Mr. Nagendra Kumar, AC to AAG 9

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-10-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

In the present writ petition, petitioner has claimed that
posts of Home Guard should be treated to be civil posts as he is
discharging the duty alike to police personnel and as such he
should be given all consequential benefit at par with the regular
police personnel.

Present writ petition has been filed for on or behalf of the
petitioner belonging to the Home Guard category. He has
claimed that he is appointed under the Bihar Home Guard Act,
1947(hereinafter referred to as the Act) and condition of service



and duties are governed by the Act as well as Bihar Home Guard Rule, 1953 (hereinafter referred to as the Rule) providing various nature of duties and claimed that he is for all purposes at par with the regular police force of the State Government. It has been claimed that he is not being paid salary at par with police personnel but is receiving honorarium at the rate of Rs.200 per day but it has been stated by the State that the said amount has been enhanced at the rate of Rs.400 per day.

Basic claim of the petitioner is that he should be treated for all purposes of regular member of police force of the State Government which has been seriously objected by the State counsel stating that member of Bihar Home Guard are quite distinct and different to the member of regular police of the State Government, as nature of entry and responsibilities are different. The members of Home Guard performs the duty on voluntary basis. Selection is made on the basis of manner, mode and the criteria fixed under the Bihar Home Guard Act, 1947, member of Home Guard cannot be said to be holding the civil post. It is a volunteer organization having no semblance as an employee of the State Government but State Government used to take their duties in the emergent situation and they are paid remuneration fixed by the State Government from time to time are paid in the



shape of honorarium. The claim is completely unsustainable in law. This issue has come before Hon'ble Supreme Court in Civil Appeal No. 275 of 2015 where two questions were raised, one it was raised for absorption in police force another they are entitled to regular pay scale looking the period of duty and nature of duty performed by the them, are very rigorous nature at par with the nature of duty to the police personnel. Hon'ble Supreme Court has considered the Home Guard Act and Rule framed there under of different State and the genesis of creation and role of Home Guard, nature and period of duties has been considered and has found that they cannot compare themselves with the member of regular police force of the State Government as they are members of volunteer organization.

Before dealing with the issue on merit it will be proper to examine aim and object of creation of Home Guard and relevant provisions relates to Home Guard of the State Government. The Government of Bihar has enacted the Bihar Home Guard Act, 1947 where Aims and Object has been mentioned that it is volunteer organization to assist in the maintenance of peace and tranquility of the Bihar and to inculcate habits of self reliance and discipline among the volunteers and public in general and to develop in them a sense of civic responsibility. Section 2

provides that “Home Guard” means a person who is enrolled under Act. Section 3 deals with constitution of Home Guards stipulates the State Government shall constitute in such manner as may be prescribed for each of the areas specified in a notification under sub-section (3) of Section 1, Home Guards who shall discharge such functions in relation to the protection of persons, the security of property of 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. It has further been said that the Home Guards in the State of Bihar shall for the purposes of this act be deemed to be a single force and the members thereof shall be formally enrolled and such force shall consist of such number of officers and men, and their qualifications and conditions of training and service shall be such as may be prescribed. Section 4 provides that the District Magistrate having jurisdiction over by an area by an order would call out any Home Guard for the discharge of any duty assigned to Home Guards in accordance with the provision of the Act and Rules framed thereunder. Section 5 provides control by Officers of police force, stipulates that when a Home Guard is called under Section 4 in aid of police force, shall be under the control of Officers of police force. Section 6 deals with, a Home Guard



when called out under Section 4 shall have the same powers, privileges and protection as an officer of police appointed under any enactment for the time being in force. Section 7 of the Act deals with control over Home Guard, provides that general superintendence, direction and control of Home Guard shall vest in and shall be exercised by the District Magistrate. Section 8 stipulates, a Home Guard shall be required to serve the State Government for a period of twelve months (including the period spent over training) which period may be extended by the State Government to such further periods as it may consider necessary, and the Home Guard shall thereafter serve in the reserve force for a period of three years and, while in the reserve, shall be liable to be called out for duty at any time. Section 12 says that a Home Guard acting in the discharge of his functions under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

Rule has been framed under the Act. Rule 5 prescribes the procedure for appointment of officers and men of this Home Guards Force. Rule 6 deals with discipline. Rule 7 deals with discharge provide that a Home Guard shall be discharged on completion of the period of his service for three years. Rule 10 is for the purposes of uniform and accoutrements. Rule 11 is for

training and Rule 12 deals with the period of duty relevant to
quote Rule 12 of the Rule:

“12. Period of duty.- (1)(i) After the training prescribed under Rule 11 and during the period in which a Home Guard is required to serve the State Government under sub-section (1) of Section 8 of the Act, he shall be required to be on duty for three days a month or six days every alternate month, each day being of six hours, and shall attend training camp for three weeks in the year;

Provided that ex-Home Guards including members of the technical corps who are re-enrolled for a second term of service may be exempted from attending the monthly duty other than attendance at the refresher course at the discretion of the Inspector-General or the Commandant.

(ii) While the convenience of the Home Guard will ordinarily be taken into account, he must accept the roster of duties prepared by Platoon Commander concerned or other superior officers.

(iii) A Home Guard in the reserve force shall attend a refresher course for three weeks every year or for such other term as may be determined by the State Government from time to time

(iv) Notwithstanding anything contained in clauses (i) to (iii), a Home Guard shall at any time be liable to be called out for the discharge of any duty specified in sub-rule (2) of Rule 13 which may be allotted to him by the District Magistrate.

(v) Ordinarily, a Home Guard shall be called out to serve only in his own district, but in an emergency he shall be liable to serve at any time anywhere in the State.

(2) (i) The District Magistrate may, under Section 4 of the Act, call out a Home Guard by an order in Form F for the discharge of any duty in accordance with the provisions of the Act and these Rules.

(ii) A Home Guard may be called out even under the verbal orders of the District Magistrate, whenever the latter considers that an emergency has arisen.”

Rule 13 is also nature of duties to be performed by Home Guard and Rule 14 deals with allowances. Rules 13 and 14 of Home Guard Rules are as follows:

“13. Duties.- (1) It shall be the duty of every Home Guard to assist in the maintenance of peace and tranquility of the State, to inculcate the habit of self reliance and discipline and to develop a sense of civic responsibilities among citizens of the State and to assist in the maintenance of essential services for which these volunteers may be trained specially.

(2) Subject to any general or special orders of the District Magistrate, the Home Guards may be required to perform all or any of the following duties:-

- (a) prevention of commission of crime;
- (b) protection of life and property;
- (c) assistance in the organization and functioning of village guards;
- (d) collection and communication of intelligence concerning law and order to the immediate superior;
- (e) Suppression of disorders;
- (f) to report and check currency of rumours likely to disturb the peace;
- (g) to assist fire-fighting services;
- (h) to render first-aid help in the removal of casualties to hospitals;
- (i) relief work relating to outbreak of fire or accident or natural calamities;

(3) Every officer of the Home Guards Force shall comply with all orders issued either by the Inspector-General or the Commandant or the District Magistrate or any officer authorized by the Inspector-General the Commandant or the District Magistrate in accordance with the general or special orders of the State Government.

(4) Every member of the Home Guards Force shall carry out the orders of his superiors promptly and with due diligence.

(5) Failure to attend at the hour, date and place

specified in any order of the District Magistrate, the Inspector-General or the Commandant, for the discharge of any duty, under the provisions of this Act and these Rules shall amount to an offence under clause (a) of sub-section (i) of section 10 of the Act.

14. Allowance.- (1) (i) During the period in which a Home Guard is on active service (excluding the period spent over training) or in the reserve force under sub-section (1) of Section 8, he shall receive duty allowance at a rate of Rs.1.50 in addition to rations in accordance with the prescribed scale per day. If no ration is supplied he will draw a ration allowance of Rs.40 per month:

Provided that if the hours of duty is less than 3 hours a day, the Home Guard will draw a duty allowance of Rs.1 but no rations

(ii) The period spent in reaching a parade or assembly ground will also count as duty. Home Guards shall get a single railway or bus fare of the lowest class spent by him in reaching the place and duty allowance at the rate of Rs.1.50 per day, provided duty allowance is not drawn in accordance with sub-rule (i) above.

(2)(i) During the period of training every Home Guard shall receive free boarding and lodging besides a training allowance of Rs.30 a month, in the absence of provision for free boarding, he shall receive a ration allowance at the rate of Rs.40 per months.

(ii) Home Guards of the technical corps shall get during training free lodging and rations at the rate of Rs.40 per month and duty allowance at an enhanced rate of Rs.2.50 per day.

(3) Members of the Home Guards Force, other than whole time officers, shall not be entitled to any cost of living allowance

(4) A Home Guard who dies while serving the State Government as required by sub-section (1) of Section 8 of the Act, shall be eligible for financial assistance from the Compassionate Fund, Bihar, on the same terms as are allowed to other Government servants, the duty allowance prevailing at the time being treated as pay of the Home Guard for this purpose.

(5) Pay and allowances of the whole-time officers of the Home Guards Force shall be fixed in accordance with any general or special orders that may be issued by the State Government.”

As Hon'ble Supreme Court has considered the provision relating to Home Guards of various States, after dealing with aims and objects, and various provision of Act has arrived to a conclusion that it is volunteer organization and has held that the Home Guards were indoor engagement, not they have been appointed on regular basis. They are never paid any wages/salary and there is no provision for wages/salary and other allowances. The Home Guard throughout the India their nature of duties are by and large same and similar. They are discharging the duties as and when they are called for same purpose in same and similar manner. The Court has said that relief cannot be granted for regularisation of service or grant of regular appointment and hence no relief was given. It has been held that the 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 the State are entitled. It has further been held that the State Governments shall pass appropriate orders in terms of aforesaid observation on an early date preferably within three months. It will be appropriate to quote paragraph nos. 21 and 22

of the said judgment:

“ 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 Uma Devi (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 throughout 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 regularisation 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.”

In views of the aforesaid discussions this Court also finds that by and large case of the present petition is same and that of

other Home Guard of the country they are entitled to the same relief as has been given by Hon’ble Supreme Court to the Home Guards of the other States.

In such view of the matter, this Court directs the State Government the Home Guards of the State should be given 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 the State are entitled.

With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
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