

**THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.313 of 2017  
IN  
Civil Writ Jurisdiction Case No. 11208 of 2013**

- =====
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.

.... .... Appellant/s

Versus

1. Umesh Kumar Son of Ram Hriday Rai resident of village - Dumra Bari Bazar, P.S. - Sitamarhi, District - Sitamarhi, Present posted at Home Guards Force N. 187 (U) Sitamarhi.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. S D Yadav, AAG  
For the Respondent/s : Mr. Rajni Kant Pandey  
Mr. Ranjeet Kumar Mishra

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 17-01-2018**

Seeking exception to an order dated 28.10.2016 passed by the learned Writ Court in CWJC No. 1111208 of 2013 this appeal under Clause 10 of the Letters Patent has been filed by the State of Bihar.

Seeking certain benefits as a regular police personnel the petitioner-respondent holding the post of Home Guard Establishment filed this writ petition. The learned Writ Court took note of the provisions of the Bihar Home Guard Act, 1947, the statutory rule



application in the matter, the nature of duties performed by the Home Guard , particularly Rule 12 with regard to period of duties and other aspects of the matter and after taking note of the judgment rendered by Hon'ble Supreme Court in Civil Appeal No. 275 of 2015, wherein similar questions were raised decided the issue in the following manner:-

“As Hon'ble Supreme Court has considered the provision relating to Home Guards of various States, after dealing with aims and objects, and various provisions 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 their duties as and when they are called for same purpose in same and similar manner. The Court has said relief cannot be granted for regularization 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 government shall pass appropriate orders in terms of aforesaid observation on an early date preferably within three month. It will be appropriate to quote paragraphs nos. 21 and 22 of the said judgments :-

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 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.”

In view of the aforesaid discussion this Court also finds that by and large case of the present petitioner is same and that of other Home Guard of the Country their 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 matters, 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 to police personnel of the State are entitled.”

As the learned Writ Court has decided the issue based on the judgment rendered by the Supreme Court and has only granted limited benefits as indicated hereinabove, we see no reason to make any indulgence into the matter.

The appeal stands dismissed.

**(Rajendra Menon, CJ)**

**(Anil Kumar Upadhyay, J)**

mrl./-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | N.A.       |
| Uploading Date    | 19/01/2018 |
| Transmission Date |            |

