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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 26th September, 2018*

+ **W.P.(C) 10156/2018**

NARESH KUMAR SHARMA AND ORS. Petitioners

Through **Mr. Sarthak Chaudhary with Mr.
Pawan Kumar, Advocates.**

versus

STATE OF NCT OF DELHI AND ORS. Respondents

Through **Ms. Vibha Mahajan Seth, Advocate.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM APPL 39582/2018 (exemption)

1. Exemption is allowed, subject to all just exception.
2. The application stands disposed of.

W.P.(C) 10156/2018

3. This is a petition under Article 226 of the Constitution of India filed by 55 petitioners seeking following reliefs :

“(a) issue appropriate writ, order or direction in the nature of mandamus in light of the information regarding the need for enrolment of several thousand Home Guards, and challenging the order and notification dated 20th July, 1959 passed by the Delhi Government terminating the services as Home Guards arbitrarily and de hors the Delhi Home Guard Rules, 1959 being unconstitutional a relevant piece of legislation not applicable to the case of petitioners and

consequently, the practice hitherto being followed regarding discharge of Home Guards, being unconstitutional violative of Articles 14 and 21 of the Constitution of India.

(b) issue appropriate writ, order or direction in the nature of mandamus directing the respondents nos.1 to 3 to review the scheme of the Rules and the practice regarding discharge and reinstatement of Home Guards and to enact a scheme in consonance with Articles 14 and 21 of the Constitution in order that the ongoing requirements of engaging home Guards in public interest is properly taken care;

(c) issue appropriate writ, order or direction in the nature of mandamus in view of the information made available through the process of right to information and the communications dated 03.11.2015, directing the respondents 1-3 to reinstate the petitioners as Home Guards as if they have not been discharged at all and grant appropriate consequential relief;

(d) issue appropriate writ, order or direction in the nature of mandamus directing respondents nos. 1 to 3 to frame a comprehensive scheme for absorption/accommodation of Home Guards in the relevant services of the State.

(e) For costs of this petition.”

4. The petitioners have been serving as Home Guards during different periods from the year 1986 to 2000 when their services were no longer required.
5. Counsel for the petitioners submits that the government should frame a scheme for the absorption and for regularisation of the services of

Home Guards. In addition, learned counsel prays that the petitioners should be reinstated and should be paid wages as per the similarly situated persons employed with the Delhi Police and performing somewhat identical and rendering identical services.

6. Ms. Mahajan, Advocate, who enters appearance on an advance copy on behalf of the respondents, submits that the issues sought to be urged before this Court have already stand decided by a Division Bench of this Court in *Anant Prasad and others Vs. Union of India and others*, W.P. (C) 3126/2001 decided on 24.01.2013, MANU/DE/0248/2013. She has drawn the attention of the Court to the following paragraphs, which are reproduced below :

“Issue II: Whether the policy dated April 18, 2000 framed by the respondents conforms to the observations made by a Division Bench of this Court in its judgment dated May 26, 1999 passed in Mansukh Lal Rawat case's (supra)

25. As already noted hereinabove, in Mansukh Lal Rawat's case (supra) a Division Bench of this Court held since the Delhi Home Guards organization is a voluntary organization the services of its members cannot be regularized. While so holding, it was observed by the Court that the respondents should frame a transparent and workable policy for enrollment/re-enrollment of the members/discharged members of the Delhi Home Guards organization.

26. Pursuant thereto, on April 18, 2000 the respondents framed a policy for enrollment/re-enrollment of the members/discharged members of the Delhi Home Guards organization. As per said policy, the discharged members of the Delhi Home Guards organization were

given 1 last opportunity to seek appointment in the said organization for another term of 3 years. The policy prescribed that the members of Delhi Home Guard organization who have been discharged on completion of 3 years tenure and have not since been on the rolls of the Directorate of Home Guards for more than six months (i.e. six months gap from the date of discharge) 'may' be considered for appointment for one more term of 3 years provided that they have rendered excellent service with regard to discipline, general conduct and discharge of duties as Home Guard Volunteers.

27. We fail to see how the policy dated April 18, 2000 framed by the respondents does not conform to the observations made by a Division Bench of this Court in its judgment dated May 26, 1999.

28. As per the petitioners, the respondents should have first appointed discharged members of the Home Guards Organization including the petitioners as members of the organization before making new appointments in the organization. (See paragraph 13 above). A perusal of the judgment dated May 26, 1999 would show that no such direction was issued by this Court that the respondents should first appoint discharged members of the Home Guards organization before making new appointments in the organization.”

7. Ms. Mahajan further submits that the aforesaid judgment of the Division Bench of this Court was carried to the Supreme Court where large number of matters were listed. She further submits that the judgment of this Court has attained finality. Reliance is placed on the following paragraphs of the decision rendered by Supreme Court in ***Grah Rakshak, Home Guards Wel. Asso. Vs. State of H.P. & Ors.***,

Appeal no.2759 of 2015 (arising out of SLP (C) no.12858 of 2009) :

“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.

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.”

8. Learned counsel for the petitioners fairly submits that it is not in dispute that the question raised by him has already attained finality. However, counsel submits that the apathetical conditions have forced the petitioners to approach this Court for seeking directions that the respondents should consider their pitiable conditions.
9. Ms. Mahajan submits that the petitioner has placed reliance on a reply received by him on a query raised under Right to Information Act, 2005. The relevant portion of the information sought under RTI Act reads as under :

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Sl. No.	Questions	Answers
16.	Has the State Government of Delhi	Directorate General of

	framed appropriate scheme in relation to the Home Guards who have been rendering service for a number of year in compliance with the Rajesh Mishra and other Vs. Government of NCT Delhi and others CWP No.4388 of 2011 decided on 29.04.2002 and Delhi (Home Guards Welfare Association' (Delhi Pradesh) (Regd) through its President vs. Ltd. Governor of Delhi and others CWP No.2391/1999 decided on 05.08.2002 passed by the Hon'ble High Court of Delhi	Home Guards has been functioning as per the Bombay Home Guards Act, 1947, as extended to the Union Territory of Delhi as directed by Hon'ble Court which also clarified that; Home Guards are not civil servant?- accordingly voluntary Stature is being preserved as per laid down Act, Rule & Policies:
17.	What action has been taken by the Government of Delhi regarding reservation for Home Guards and Civil Defense personal in the recruitment of Group 'C' and 'D' posts in terms of the letter dated 19.05.2003 written by the Deputy Secretary, Home (General) to Director General Prisons (Central Jail Tihar), New Delhi commissioner of Police (PHQ) LPr Estate; New Delhi, Chief Fire Officer, Connaught Circus, Connaught Place, New Delhi.	Directorate General of Home Guards has initiated the process for giving reservations to the Home Guards in recruitment of constable in Delhi Police.

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10. Ms. Mahajan further submits that there is no bar for the Home Guards, who had previously been served as Home Guards to make application under Bombay Home Guards Act, 1947 and the rules framed thereunder. She further submits that subject to meeting the eligibility criteria and all other conditions, petitioners can always be considered

as and when fresh Home Guards are enrolled.

11. Having regard to the fact that the question raised in this writ petition admittedly stands settled by the decision of the Division Bench of this Court and upheld by the Supreme Court by a detailed judgment. The present writ petition cannot be entertained. However, if the petitioners choose to make an application for enrolment, we have no hesitation in saying that the respondents would consider the same in accordance with Bombay Home Guards rules and in accordance with law subject to fulfilling all other conditions.

CM APPL 39583/2018 (maintainability)

12. In view of the order passed in the writ petition, the application stands disposed of.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 26, 2018

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