

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1890 of 2021

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Kanhaiya Manjhi, Son of Late Ayodhya Manjhi, Resident of Village-Pachlakhi, P.S. Nautan, District-Siwan, at present village-Dharnihata, P.S.-Mirganj, District-Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General-cum-Commandant General, Bihar Home Guards and Fire Services Bihar, Patna.
2. The Commandant, Bihar Home Guard, Patna.
3. The District Commandant, Bihar Home Guard, Siwan.
4. The Superintendent of Police, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vyas Kumar Mishra, Advocate
For the Respondent/s	:	Mr. M.N.H. Khan, SC 1
		Mr. Sheo Shankar Prasad, SC 8

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 20-04-2022

Heard learned counsel for the parties.

2. In the instant petition, petitioner has prayed for the following relief/reliefs;

“i. To issue an appropriate writ(s) in the nature of writ of certiorari for quashing the order dated 31.08.2020 passed by Commandant Home Guard, Bihar, Patna contained in Memo No. 3057 dated 31.08.2020 by which the application of the petitioner for appointment on the post of Home Guard on compassionate ground has been rejected on the ground that the father of the petitioner namely Late Ayodhya Manjhi was not on duty at the time of his death.



ii. To issue an appropriate writ/writs, order/orders, direction/directions for commanding the respondents to appoint on compassionate ground on the post of Home Guard in place of his father.

iii. To pass such other order/ orders as your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. Pursuant to the orders dated 30.03.2022 and 06.04.2022, State counsel has failed to furnish copy of the compassionate appointment Rules/Scheme issued by the State of Bihar.

4. Question for consideration in the present petition is whether deceased Home Guard's legal representative (LR) is entitled to compassionate appointment or not?

5. Learned counsel for the petitioner submitted that if a Home Guard died while he was in service, his legal representative (LR) is entitle to compassionate appointment in the light of Section 6 and 12 of the Bihar Homeguards Act, 1947.

6. *Per contra*, learned counsel for the State/respondents resisted the aforesaid contention of the petitioner and submitted that nature of Home Guard is voluntarily assisting in the maintenance of peace and tranquility of the persons of 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. Therefore, Home Guards do not fall under the definition of government servants/public servants so as to consider the petitioner's claim for compassionate appointment with reference to the fact that the petitioner's father died while he was holding the post of Home Guard and further he has not died while on duty.

7. Heard learned counsel for the respective parties.

8. Home Guard post is governed by the Bihar Homeguards Act, 1947 (for short "Act 1947"). The object of Home Guard services is to provide volunteer force to assist in the maintenance of peace and tranquility in the State of Bihar etc and their appointments are governed by Section 4. For the purpose of the present case it is necessary to reproduce Sections 4, 5, 6 and 12.

"4. Calling out Home Guards- *The District Magistrate having jurisdiction over any area in which this Act is in force may, by an order made in such manner as may be prescribed, call out any Home Guard for the discharge of any duty assigned to the Home Guard in accordance with the provisions of this Act and the rules made thereunder.*

5. Control by officers of police force- *A Home Guard when called out under section 4 in aid of the police force, shall be under the control of the officers of the police force in such manner and to such extent as may be prescribed.*



6. Power and protection of Home Guards-(1)

Subject to the provision of this Act and the rules made thereunder, 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.

(2) No prosecution shall be instituted against a Home Guard in respect of anything done or purporting to be done by him in the discharge of his duty as a Home Guard, except with the previous sanction of the District Magistrate having jurisdiction over the area in which the Home Guard has been raised.

12. Home Guard to be a public servant- *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 (XLV of 1860) ”*

9. Reading of the aforesaid provisions it is crystal clear that Home Guards are treated as public servants under Section 12. Once Home Guards are treated as public servants, the Scheme of compassionate appointment framed by the State of Bihar or Home Department is required to be implemented in respect of Home Guard who died while he was in service. In the light of these facts and circumstances, the contention of the State – respondents that Home Guard is only volunteer service and if Home Guard died while not on duty, his legal representative (LR) is not entitled to



compassionate appointment cannot be appreciated in the light of Section 12 of the Act, 1947.

10. Accordingly, order dated 31.08.2020 (Annexure – 6) is set aside. Writ petition stands allowed. Concerned respondent is hereby directed to re-examine the petitioner's claim for compassionate appointment in the light of compassionate appointment Rules/Scheme of the State Government read with the guidelines issued by the Home Department.

11. The above exercise shall be completed by the competent authority or a committee and take a decision as to whether petitioner is entitled for compassionate appointment or not? If petitioner is otherwise eligible, necessary order of compassionate appointment be issued. If petitioner is not entitled, in that event a detailed speaking order be passed. The above exercise shall be completed within a period of three months from the date of receipt of this order.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	27.04.2022
Transmission Date	

