

CM-19348-CWP-2024 in/and
CWP-8289-2022 (O&M) & connected cases 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(106+263)

CM-19348-CWP-2024 in/and
CWP-8289-2022 (O&M)
Date of Decision : January 28, 2025

State of Punjab and others

.. Petitioners

Versus

Bhupinder Singh and others

.. Respondents

(2)

CWP-14885-2023

Balwinder Kumar and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

(3)

CWP-15040-2023

Shinda and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

(4)

CWP-23146-2024

Harbhajan Singh and others

.. Petitioners

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajesh Sehgal, Addl. Advocate General, Punjab
 for the petitioners-State in CWP-8289-2022 and
 for the respondents-State in CWP-14885-2023,
 CWP-15040-2023 and CWP-23146-2024.



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Mr. Arshit Goel, Advocate, for the petitioners
in CWP-14885-2023, CWP-15040-2023 and
CWP-23146-2024.

Mr. G.S. Nahel, Advocate, for respondent No.1
in CWP-8289-2022.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-19348-CWP-2024 in CWP-8289-2022

Present application has been filed for preponing the date of hearing of the application i.e. CM-719-CWP-2023, which stands adjourned to 28.01.2025.

As the application i.e. CM-719-CWP-2023 is listed for hearing today, application for preponement i.e. CM-19348-CWP-2024 has become infructuous.

CM stands disposed of as infructuous.

CWP-8289-2022 (O&M) & connected cases

1. By this common order, four writ petitions, the details of which have been given in the heading, are being disposed of as all these petitions involve the same question of law on similar facts.

2. In the present bunch of writ petitions, the grievance is being raised by the Home Guard Volunteers that they are to be treated as ‘employees’ of the Home Guard Establishment and they are also entitled for the gratuity admissible to them as envisaged under the Payment of Gratuity Act, 1972.

3. In CWP-8289-2022, the respondent Bhupinder Singh and others had approached the controlling authority under the Payment of Gratuity Act, 1972 and vide order dated 28.02.2020 (Annexure P-1), the



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benefit of gratuity has been granted to the respondent- Home Guard Volunteers by the controlling authority, which order has been upheld by the Appellate Authority on 24.08.2021 (Annexure P-2), which orders are under challenge in the present petition.

4. In other petitions, the petitioners have straightaway come before this Court for the grant of same benefit as has been allowed in favour of the respondents- Home Guard Volunteers in CWP-8289-2022.

5. The question which arises for the consideration before this Court is whether, the Home Guard Volunteers are to be treated as employee within the definition envisaged under the Payment of Gratuity Act, 1972 keeping in view the provisions of the Punjab Home Guards Act, 1947 (hereinafter referred as '1947 Act') as well as Punjab Home Guards Rules, 1963.

6. The question whether, members of the Home Guard Establishment are the employees of the State of Punjab or the said duties are being discharged as a volunteer so as to get the honorarium, is no longer res integra as the same has already been decided by the Coordinate Bench of this Court while passing order in ***RSA No.627 of 2005 titled as Nirmala Devi and others vs. Director, Civil Defence, Home Guards, Punjab, Chandigarh and others, decided on 11.02.2009*** wherein, a finding has been recorded that the Home Guard Establishment is a source of employment and the same is a volunteer body where the citizens voluntarily offer their services for the benefit of society and anyone, who is a professional, a Government servant, a person carrying any trade or occupation, or



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industrial worker, university student etc, who can spare time for the benefit of community can be a member of Home Guard Establishment. After considering the 1947 Act as well as 1963 Rules, a finding was recorded that the Home Guard Organization is a purely voluntary organization and the Home Guards are not entitled for the benefits as admissible to the regular employees or the consequential benefits claimed thereof. The relevant paragraphs of the judgment are as under:-

“ In the introductory passage of the Home Guards' Rules, the Home Guard organisation has been described to be a voluntary force. It was conceptualized in the wake of Chinese aggression in 1962 when Centre advised the States and the UTs to merge their existing voluntary organisations into one all India force known as Home Guards' and it was expected to be a voluntary organisation both in concept and character. The Rules were further elaborated to include their role at the time of calamities. In short they to be utilised as volunteers during the course of disaster management. The enrollment procedure also does not vizualise any regular character. However, certain other categories of staff have been set up which forms the various levels of hierarchy in the organisation and includes clerical and Class III and IV employees and extends upto the level of Commandants and Divisional Commandants. The Rules do not stipulate that Home Guards will be entitled to any regular pay scale or a regular service so as to invite the benefits as admissible to such a regular employee. Division Bench of Delhi High Court has observed in [Rajesh Mishra's](#) case (supra) as under:-

"22. In [Man Sukh Lal Rawal & others vs. Union of India & Others](#), Civil Writ Petition No. 4286 of 1997 decided on 26.5.1999 a Division Bench of this Court having regard to the provisions of the said Act, inter alia, held:-



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*"The two questions that have been raised by the petitioners before us are whether they are entitled to be regularized as members of the Home Guards, and whether their services can be terminated without following the procedure **laid down by Rule 8 of the Rules.***

In so far as the first question is concerned, the genesis, history and concept of the Home Guards clearly show that it is not an "employment" or a "source of employment". It is a volunteer body where citizens voluntarily offer their services for the benefit of society. There are no hard and fast rules for recruitment or the nature of duties and functions that are to be performed by a member of the Home Guards. It is also not as if a member of the Home Guards cannot have employment elsewhere. A member of the Home Guards can be a professional or a government servant or a person carrying on any trade or occupation, industrial worker, university student, etc; it can be anyone who can give some spare time for the benefit of the community. In fact, of the applicants who were before the Tribunal, admittedly some of them were employed in the government and some in the private sector. This being the position, there cannot be any question of regularizing any person as a volunteer or for carrying on any voluntary activity. A contrary view will destroy the very ethos and character of the Home Guards."

Therefore, I am of the considered opinion that a perusal of the Home Guards' Rules leave no room for doubt that Home Guards Organisation is purely a voluntary organisation as conceptualized during the time of its birth and therefore, the deceased certainly could not have been considered to be a regular employee or a Government employee so as to entitle him to the benefits of the service as claimed by his legal heirs, the appellants after his death.

For the reasons stated above, the question of law is answered



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as above. It is held that Home Guards Organisation is purely a voluntary organisation and the Home Guards are not entitled to benefits of the regular employee or consequent benefits claimed thereof.

The appeal being devoid of any merit is hereby dismissed.”

7. Learned counsel for the Home Guard Volunteers has not been able to rebut the said fact that the issue raised in the present petition as to whether, the Home Guard Volunteers are the employees of State of Punjab so as to be covered under the Payment of Gratuity Act, 1972 has already been decided while passing order in ***Nirmala Devi’s case (supra)***.

8. Now, the question that needs adjudication is that keeping in view the judgment in ***Nirmala Devi’s case (supra)***, whether a member of the Home Guard Establishment, who is a volunteer and is not an employee of the State, can seek the benefit of gratuity under the Payment of Gratuity Act, 1972 or not.

9. Under the Payment of Gratuity Act, 1972, the definition of an employee has been given, which is as under:-

“ (e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company or shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

10. A bare perusal of the above definition would show that any person who is employed for wages, is to be treated as an employee. As per



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the judgment in *Nirmala Devi's case (supra)* coupled with the 1947 Act as well as the 1963 Rules, it is a conceded position that the Home Guard Volunteers are not being paid wages rather they are only given daily allowances in the shape of honorarium. Once, the Home Guard Volunteers are not being paid wages, they are not covered under the definition of employee as envisaged under the 1972 Act so as to claim gratuity.

11. Learned counsel appearing on behalf of the Home Guard Volunteers has not been able to show as to how, their claim is covered under the 1972 Act to claim gratuity so as to be treated employee of the State of Punjab.

12. Once, a categorical finding has been recorded by this Court in *Nirmala Devi's case (supra)* that the Home Guard Volunteers are not the employees of the State and are not being paid wages and the members of the Home Guard Establishment are Volunteers, the authorities concerned have wrongly concluded that the Home Guard Volunteers are the employees of the State of Punjab so as to enable them to claim gratuity as admissible under the Payment of Gratuity Act, 1972. The findings which have been recorded by the authorities in the orders dated 28.02.2020 (Annexure P-1) and 24.08.2021 (Annexure P-2) respectively are without appreciating the actual provisions of the Payment of Gratuity Act, 1972 wherein, the definition of employee has been given, which has wrongly been interpreted hence, the findings of the authorities under the Payment of Gratuity Act, 1972 in the impugned orders is perverse to the definition of the employee under the Payment of Gratuity Act, 1972 keeping in view the facts and circumstances that the Home Guards are not employees but Volunteers and



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gratuity claim only be claimed in case the wages are paid to the employee.

13. Further, the question as to whether the Home Guards are being paid wages or not has also been settled by the Hon'ble Supreme Court of India in ***Civil Appeal No.2759 of 2015 titled as Grah Rakshak, Home Guards Welfare Association vs. State of H.P. and others, decided on 11.03.2015*** to hold that the Home Guards are not being paid the salary as there is no such provision. The relevant paragraph 17 of the judgment is as under

“ 17. On the basis of the Scheme, as promulgated by the Government of India, the State Government with the sanction of the Governor of West Bengal raised the battalion of Border Wing Home Guards, as indicated earlier and they were to be paid from a given head of expenditure of the State Government. The Scheme, however, makes it clear that the expenditure incurred would be reimbursed by the Central Government. The Central Government should not and cannot get out of this undertaking. It is no doubt true that the State of West Bengal being in the position of an employer of the respondent petitioners, owes the primary responsibility of making all the payments on account of salary, allowances and other perquisites to them as admissible to the permanent staff of the Border Wing Home Guards but this [pic]burden of expenditure must be ultimately borne by the Central Government. The petitioners have been guarding the borders of the country assisting BSF in checking the infiltration from across the border. The petitioners have been working and discharging their duties under the control of the authorities of the Border Security Force. We also find that the Central Government cannot shed its responsibility by raising a lame plea that it was because of the State Government that voluntary character of



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the engagement of the writ petitioners, as per the Scheme, was lost. In our view, the primary responsibility for deployment for such a long duration squarely lies upon the Central Government. The deployment was envisaged to be for a period of 3 months, to be continued, only if necessary as may be assessed by the authorities of the Border Security Force. The authority to continue the deployment beyond the period of 3 months was entrusted to the responsible authorities of the Border Security Force by the Central Government itself. There is no dispute that the writ petitioners were continued accordingly. In such a situation the State Government hardly had any choice in the matter to cease or withdraw the deployment engaged in the job of patrolling of borders under operational control of BSF.”

14. Learned counsel for the Home Guard Volunteers has not been able to differentiate the said judgment in any manner so as to not be applicable upon the petitioners.

15. At this stage, learned counsel for the Home Guard Volunteers submits that the Coordinate Bench of this Court while passing order in **CWP No.11357 of 2021 titled as Mahinder Ram vs. Commandant General, Punjab Home Guards and others, decided on 10.01.2025**, has directed that the respondents therein to pay the subsistence allowance to the Home Guard Volunteers.

16. It may be noticed that in the judgment in **Mahinder Ram’s case (supra)**, the only question was whether, during the period of suspension, the member of the Home Guard Establishment, are entitled for the subsistence allowance or not.

17. The question whether, the Home Guard Volunteers are to be treated as employee of the State of Punjab was not before the Coordinate



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Bench of this Court in ***Mahinder Ram's case (supra)***. Further, in paragraph 28, the Coordinate Bench has clearly mentioned that only those Volunteers of the Home Guard Establishment should be paid subsistence allowance who were doing duties for a period of 10 years till the date of their suspension. The reliance being placed by the petitioners that they be treated as employee in view of the judgment in ***Mahinder Ram's (supra)*** is not made out in the facts and circumstances of the present case.

18. On being asked to produce any order by which, the members of the Home Guard Establishment were being paid wages, no such order has been brought to the notice of this Court.

19. In the absence of any wages being paid to the members of the Home Guard Establishment coupled with the judgment of this Court in ***Nirmala Devi's case (supra)***, that the members of the Home Guard are doing volunteer service and are not to be treated as employees of the State of Punjab, the grant of the benefit by the authorities under the Payment of Gratuity Act vide impugned orders dated 28.02.2020 (Annexure P-1) and 24.08.2021 (Annexure P-2) respectively cannot be sustained in the eyes of law and are accordingly set aside.

20. The writ petition i.e. CWP-8289-2022 is allowed whereas, the other writ petitions claiming the said benefit at the hands of the Home Guard Volunteers, are dismissed.

21. Any civil miscellaneous application pending if any, also stands disposed of.

