Reserved On : 12/02/2026
Pronounced On : 19/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17518 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 23127 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 384 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

==========

Approved for Reporting	Yes	No
	√	

==========

MUKESH ARSIBHAL KARMUR & ORS.
Versus
STATE OF GUJARAT & ORS.

==========

Appearance in SCA/17518/2019:
MR AKSHAT KHARE(5912) for the Petitioner(s) No. 1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,68,69,7,70,71,72,73,74,75,76,77,8,9
MRS SUMAN KHARE(2226) for the Petitioner(s) No. 1,10,11,12,13,14,15,16,17,18,19,2,20,21,22,23,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,68,69,7,70,71,72,73,74,75,76,77,8,9
MS. DHRUTI PANDYA, AGP for the Respondent(s) No. 1,2
MR SHUSHIL R SHUKLA(5603) for the Respondent(s) No. 3

==========

Appearance in SCA/23127/2019:
MR AKSHAT KHARE(5912) for the Petitioner(s) No. 1
MRS SUMAN KHARE(2226) for the Petitioner(s) No. 1
PETITION/APPEAL WITHDRAWN/DISMISSED for the Petitioner(s) No. 2,3
MS. DHRUTI PANDYA, AGP for the Respondent(s) No. 1,2 – STATE
NOTICE SERVED for the Respondent(s) No. 3

==========

Appearance in SCA/384/2020:
MR AKSHAT KHARE(5912) for the Petitioner(s) No. 10,11
MRS SUMAN KHARE(2226) for the Petitioner(s) No. 10,11
MS. FORUM SHAH, AGP for the Respondent(s) No. 1,2 – STATE
NOTICE SERVED for the Respondent(s) No. 3

==========

CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

COMMON CAV JUDGMENT

1. Rule returnable forthwith. Learned AGPs and learned advocate for the respondents waive service of rule on behalf of respective respondents. With consent of the parties, the matter is taken up for final hearing.

2. Heard Mr. Akshat Khare, learned advocate for the petitioner/s, and Ms. Forum Shah and Ms. Dhruti Pandya, learned AGPs for the respondent-State in respective petitions and Mr. Shushil R. Shukla, learned advocate for the respondent No.3-Union of India in SCA No. 17518 of 2019.

3. Since this batch of captioned petitions raises common issues and seek common reliefs, they are being decided by way of this common judgment. To understand and answer the issue germane in the present matters, I would like to take the facts and prayers from Special Civil Application No. 23127 of 2009, treating it as the lead matter.

4. The present writ petition is filed under Article 226

of the Constitution of India, *inter alia*, seeking following reliefs:

> *"A) Your Lordship may be pleased to issue a writ of mandamus or any other writ appropriate writ, order or direction directing the respondent authorities to treat the members of the Home Guards at par with equal grade of State Police Force.*
>
> *B) Your Lordship may be pleased to issue a writ of mandamus or any other writ appropriate writ, order or direction directing the respondent to grant service benefits like pay fixation, leave overtime, medical allowances, travelling allowances, retiral benefits like provident fund like pension, gratuity, etc. to the petitioners along with arrears by considering their service from the date of appointment as Home Guard.*
>
> *C) Your Lordship may be pleased to issue a writ of mandamus or any other writ appropriate writ, order or direction directing the respondent authorities to declare the petitioners as permanent and fulltime member of Home Guard force and to treat them at par with the State Police Force in terms of service condition & benefits.*
>
> *D) Your Lordship may be pleased to issue a writ of mandamus or any other writ appropriate writ, order or direction directing the respondents authorities to verify the numbers of Home Guard in the State by removing the members of Home Guards who have already joined other employment.*
>
> *E) During the pendency of the present petition, your lordships may be pleased to restrain the respondent authorities from terminating the service of the petitioners or changing the service conditions of the petitioners in terms of order under Section 33C of the Industrial Disputes Act, 1947.*
>
> *F) During the pendency of the present petition, your lordships may be pleased to direct the respondent authorities to place on record the entire details regarding vacancies in the Police Force against the total sanctioned strength from 2002 to 2019 and also place on record the data showing the work taken from the Home Guards for the last 5 years due to short fall in the police force.*

G) Your Lordship may please to pass such order and further directions as the nature of the case may require;"

5. **BRIEF FACTS:**

5.1 All the petitioners have been appointed by the respondent-authority under Section 3 of the Bombay Home Guards Act, 1947 (hereinafter referred to as "***the Act, 1947***"). Prior to their appointments, they were subjected to physical tests and written tests, and as they have cleared the same, accordingly, respondent has appointed them as Home Guards. The petitioners have also undergone training for imparting their duties as members of Home Guard.

5.2 As per scheme of the Act, 1947, to provide voluntary organization for use in emergencies and for other purposes in the State of Gujarat, services of Home Guards availed. The respondent-State used to pay per day fixed allowance of Rs.304/- to Home Guards and the same is revised from time to time. Nonetheless, the Home Guard would not receive any monthly salary like police personnel of State.

5.3 The petitioners are serving as Home Guards since

long and felt that considering the nature of their duties and as working almost for 27 days in a month, entitled to receive the regular pay and other service benefits, which otherwise available to the State Police Force. Hence, preferred this petitions.

6. **SUBMISSIONS ON BEHALF OF PETITIONER/S:**

6.1 Mr. Khare, learned advocate for the petitioner/s, would submit that as per the scheme of the Act, 1947, and the nature of duties discharged by the petitioners as Home Guards, they are entitled to receive similar pay and other benefits given by respondent to its State Police Force. It is submitted that as per Section 2 of the Act, 1947, every Home Guard requires to discharge their duties like protection of person, security of property, public safety and maintenance of essential services, etc.

6.2 Mr. Khare, learned advocate, would further submit that apart from the aforesaid duties, Home Guards are required to guard the public buildings, patrolling for the purpose of prevention of crime, provide assistance to the ordinary police force. They are also subjected to transport from one area to another. All the aforesaid works are

similar to the work discharged by State Police Force, but paid only fixed daily allowance thereof, instead of monthly pay.

6.3 Mr. Khare, learned advocate, would further submit that all Home Guards are available for their services throughout the year, and considering the fact that nature of their services and requirements is perennial in nature, such Home Guards are required to be given equal pay for equal work.

6.4 Mr. Khare, learned advocate, would submit that the issue germane to the matter is squarely covered by the decision of this Court in the case of ***Gajaji Gopaji Jadeja Vs. State of Gujarat*** reported in ***(2005) 2 GLR 1142***. It is submitted that in a case of Border Wing Home Guards, this Court has accepted their plea to grant all regular pay and other service benefits as available to the State Police Force. It is further submitted that such decision was even not disturbed by the Division Bench of this Court as well as the Hon'ble Apex Court dismissed the appeal filed by the State.

6.5 Making the above submissions, learned advocate for the petitioners would request this Court to allow the present writ petition.

6.6 To buttress his arguments, he would rely on the following judgments:

> *(i)* ***State of W.B. And Others Vs. Pantha Chatterjee And Others*** *reported in* ***(2003) 6 SCC 469****.*
>
> *(ii)* ***Gajaji Gopaji Jadeja (supra).***
>
> *(iii)* ***State of Gujarat Vs. Gajaji Gopaji Jadeja*** *rendered in* ***Letters Patent Appeal No. 712 of 2005 dated 06.04.2011****.*
>
> *(iv)* ***State of Gujarat Vs. Gajaji Gopaji Jadeja*** *rendered in* ***Civil Appeal No.8815 of 2017.***

7. SUBMISSIONS ON BEHALF OF RESPONDENTS:

7.1 *Per contra*, Ms. Pandya and Ms. Shah, learned AGP appearing for the respondent-State, have vehemently opposed the prayers of the petitioners contending, *inter alia,* that the issue germane in the matter is not covered by the cited decisions. It is submitted that appointment of Home Guard cannot be equated with regular State Police Force, and as such, Home Guards are not entitled to receive regular pay as claimed.

7.2 Learned AGP would further submit that nature of the duties and works of Home Guards and State Police Force are not equal and similar as claimed. It is submitted that as per object of the Act, 1947, to provide voluntary organization for use in emergencies and for other purposes in the State, the appointment of Home Guards undertaken. It is submitted that unlike State Police Force, no power of investigation, arrest and to receive complaint, etc., is available with Home Guards.

7.3 Learned AGP would further submit that facts of the case of ***Gajaji Gopaji Jadeja (supra),*** are not so similar to the facts of the present case, inasmuch as in the cited case, the petitioner concerned was appointed as Border Wing Home Guard, whose services are required 24x7 to protect the border of the country. The selection criteria of Border Wing Home Guards are different from the ordinary Home Guards like petitioners. It is further submitted that as per rules of recruitment of Border Wing Home Guards, it requires that the persons concerned recruited as Border Wing Home Guard are found to be residing within 50 kilometers of concerned border, whereas there is no such area requirement for

recruitment of ordinary Home Guard under the Act, 1947 and the rules framed thereunder. It is also submitted that unlike Border Wing Home Guards, ordinary Home Guards can pursue their own vocation, as the requirements of Border Wing Home Guards are for 365 days.

7.4 Learned AGP would further submit that principle of equal pay for equal work would not be applicable to the present case, inasmuch as Home Guards are not in a position to show that all the duties discharged by them are similar as discharged by any State Police Force. It is submitted that as per settled position of law, unless it is established on record that nature of duties so discharged by petitioner is similar to other employee, no benefits of similar pay of such employee can be claimed by the petitioners.

7.5 Learned AGP would further submit that as such, the issue germane to the matter is settled down by the Hon'ble Apex Court in its following decisions, wherein it has been categorically held that requirement of Home Guard is in the necessity and as such, their services are

not perennial in nature, thereby they cannot seek regularization of their engagement.

7.6 Making the above submissions, learned AGP would request this Court to dismiss the present writ petition.

7.7 To buttress her arguments, learned AGP would rely upon the following judgments:

(i) ***Grah Rakshak, Home Guards Welfare Association Vs. State of Himachal Pradesh and Others*** reported in ***(2015) 6 SCC 247.***

(ii) ***State of Manipur And Another vs Ksh. Moirangninthou Singh*** reported in (***2007) 10 SCC 544***.

(iii) ***State Of Uttarakhand And Others Vs. Ram Bahadur Maurya And Another*** *rendered in* ***Special Appeal No. 489 of 2017 dated 17.04.2018*** *reported in* ***2018 Lawsuit(Utt) 161.***

8. Mr. Shukla, learned advocate for the respondent No.3-Union of India appeared in SCA No. 17518 of 2019, would submit that as such, essential reliefs, sought by the petitioners, are against the respondent-State; yet, Mr. Shukla, learned advocate for the respondent No.3-Union of India would adopt the arguments put forth by learned AGP appearing for the respondent-State.

9. No other and further submissions have been made by the learned advocates for the respective parties.

ANALYSIS:

10. Having heard the learned advocates for the respective parties and after perusal of their pleadings and documents, it appears that all the petitioners are appointed as Home Guards by respondent as per Act, 1947. As per nature of appointment and object of the Act,1947, their services are to be taken in case of emergency. The Home Guards are paid daily allowance. There is no prerequisite to assign everyday duty to all Home Guards, but as and when the requirement arises or in emergency, they are called and deputed to various places across the State by the Commandant.

10.1 The nature of duty and functions mentioned in Section 2 of the Act, 1947 would be to the protection of persons, security of property, public safety, maintenance of essential services, etc. It is true that a member of Home Guard when called out under Section 4 of the Act, 1947, shall have the same powers, privileges and

protection as an officer of police appointed under any Act for the time being in force. Even no prosecution shall be instituted against a member of Home Guard in respect of anything done by him in discharge of his function, except with the previous sanction of the Commissioner of Police or District Magistrate, as the case may be. At the same time Section 6 of the Act, 1947, it is clear that member of the Home Guard would become in aid of police force, thereby under control of officers of police force. However, it does not mean that the nature of duties and functions of Home Guards is akin to those of the State Police Force. The object of Act, 1947 itself suggests that Home Guards are utilized as a voluntary organization for emergency purposes; consequently, their services cannot be characterized as being perennial in nature.

11. To test the arguments of Mr. Khare, learned advocate for the petitioners, I would like to reproduce the relevant sections of the Act, 1947 and Gujarat Police Act, 1951 (hereinafter referred to as "***the Act, 1951***") to demonstrate the distinction between the duties discharged by the Home Guards and the State Police Force.

11.1 The relevant provisions of Sections 2, 4 to 7 of the Act, 1947 are as follows:

> *"**2**. (1) The [State] Government shall constitute for each of the areas specified in sub-section (3) of section 1 and for each of the areas notified under the said sub-section (3) a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property, the public safety and the maintenance of essential Services as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.*
>
> *(1A) In respect of the Saurashtra area and the Vidarbha region, the Home Guards raised or constituted, immediately before the commencement of the Bombay Home Guards (Extension and Amendment) Act, 1958, shall be deemed to be constituted under sub-section (1)].*
>
> *(2) The [State] Government shall appoint a Commandant of each of the Home Guards constituted under sub-section (1).*
>
> *(3) The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the State of Gujarat.*
>
> ***4.** (1) The Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of this Act and the rules made thereunder.*
>
> *(2) The Commandant General may in an emergency call out a member of the Home Guards for training or to discharge any of the said functions or duties in any part of the State of Gujarat.*
>
> ***5.** (1) A member of the Home Guards when called out under section 4 shall have the same powers, privileges and protection as an officer of police appointed under any Act for the time*

being in force.

(2) No prosecution shall be instituted against a member of the Home Guards in respect of anything done or purporting to be done by him in the discharge of this functions or duties as such member except with the previous sanction of the Commissioner of Police in any area for which a Commissioner of Police has been appointed and of the District Magistrate, elsewhere.

***6.** The members of the Home Guards 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 by rules' made under section 8.*

6A. (1) Every person who for any reason ceases to be a member of the Home Guards shall forth with deliver upto the Commandant or to such person and at such place as the Commandant may direct, his certificate of appointment or of office and the arms, accoutrements, clothing and other necessaries which have been furnished to him as such member.

(2) Any Magistrate, and for special reasons which shall be recorded in writing at the time, any police officer not below the rank of a Deputy Commissioner for Police in any area for which a Commissioner of Police has been appointed and Assistant or Deputy Superintendent of Police elsewhere, may issue a warrant to search for and seize, wherever they may be found, any certificate, arms, accoutrements, clothing or other necessaries not so delivered up. Every warrant so issued shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, by a police officer of if the Magistrate or the police officer issuing the warrant so directs by any other person.

(3) Nothing in this section shall be deemed to apply to any article which under the orders of the Commandant General has become the property of the person to whom the same was furnished.

6B. (1) The Commandant shall have the authority to suspend, reduce or dismiss or fine, to an amount not exceeding fifty rupees, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4 neglects or refuses to obey such order or to discharge his functions and duties as a member of Home Guards

or to obey any lawful order or direction given to him for the performance of his functions and duties or is guilty of any breach of discipline or misconduct. The Commandant shall also have the authority to dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(1A) Notwithstanding anything contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed if, in the opinion of the Commandant, the services of such members are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post under his immediate control.

(2) When the Commandant General or the Commandant passes an order for suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (1), he shall record such order or cause the same to be recorded, together with the reasons therefore and a note of the inquiry made, in writing, and no such order shall be passed by the Commandant General or the Commandant unless the person concerned is given an opportunity to be heard in his defence.

(3) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government, within thirty days of the date on which he was served with notice of such order. The Commandant General or the State Government, as the case may be, may pass such order as he or it thinks fit.

(4) The Commandant General or the State Government may at any time call for and examine the record of any order passed by the Commandant or Commandant General, respectively, under sub-section (1) or (1A) for the purpose of satisfying himself or itself as to the legality or propriety of such order passed by the Commandant or the Commandant General, as the case may be, and may pass such order with reference thereto as he or it thinks fit.

(5) Every order if no appeal is made therefrom as hereinbefore provided and every order passed in appeal or revision under this section shall be final.

(6) Any fine imposed under this section may be recovered in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a Court as if such fine were imposed by a Court.

(7) Any punishment inflicted on a member of the Home Guards under this section shall be in addition to the penalty to which such member is liable under section 7 or any other law for the time being in force.

7.*(1) If any member of the Home Guards, on being called out under section 4, without reasonable excuse, neglects or refuses to obey such order, or to discharge his functions as a member of the Home Guards, or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction, be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred and fifty rupees or with both.*

(1A) If any member of the Home Guards wilfully neglects or refuse to deliver up his certificate of appointment or of office or any other article, in accordance with the provisions of sub-ection (1) of section 6A, he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or with both.

(2) No proceedings shall be instituted under sub-section (1) or (1A) without the previous sanction of the Commandant.

(3) A police officer may arrest without warrant any person who commits an offence punishable under sub-section (1) or (1A).”

11.2 The relevant provisions of Sections 2(4), 28, 64, 66 to 68, 71 to 73 of the Act, 1951 are as follows:

*“**2** …*

(4) "constable" means a police officer of the lowest grade and includes a Lok Rakshak;

28. *(1) Every Police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty, and any Police officer or any number or body of Police officers allocated for duty in one part of the State may, if the State Govermnent or the Inspector General so directs, at any time, be employed on Police duty in any other part of the State for so long as the services of the same may be there required.*

(2) Timely intimation shall, except in cases of extreme urgency, be given to the District Magistrate by the Inspector General of any proposed transfer under this section, and except, where secrecy is necessary the reasons for the transfer shall be explained; whereupon the officers aforesaid and their subordinate shall give all reasonable furtherance to such transfer.

64. *It shall be the duty of every Police officer-*
(a) promptly to serve every summons and obey and execute every wanant or other order lawfully issued to him competent authority, and to endeavour by all lawful means to give effect to the lawful commands of his superior:

(b) to the best of his ability to obtain intelligence concerning the commission of congnizable offences or designs commit such offences, and to lay such information and to take such other steps, consistant with law and with the orders of his superiors as shall be best calculated to bring offenders to justice or to prevent the commission of cognizable and within his view of non-ognizable offences;

(c) to prevent to the best of his ability the commission of public nuisances;

(d) to apprehend without umeasonable delay all persons whom he is legally authorised to apprehend and for whose apprehension there is sufficient reason;

(e) to aid another Police officer when called on by him or in case of need in the discharge of his duty, in such ways as would be lawful and reasonable on the part of the officer aided;

(f) to discharge such duties as are imposed upon him by any law for the time being in force.

66. *It shall be the duty of every Police Officer-*
(a) to afford every assistance within his power to disabled or helpless persons in the streets, and to take charge of intoxicated persons and of lunatics at large who appear dangerous or incapable of taking care of themselves;

(b) to take prompt measures to procure necessary help for any person under arrest or in custody, who is wounded or sick and whilst guarding or conducting any such person, to have due regard to his condition;

(c) to arrange for the proper sustenance and shelter of every person who is under arrest or in custody;

(d) in conducting searches, to refrain from needless rudeness and the causing of unnecessary annoyance;

(e) in dealing with women and children to act with strict regard to decency and with reasonable gentleness;

(f) to use his best endeavours to prevent any loss or damage by fire;

(g) to use his best endeavours to avert any accident or danger to the public.

67. *It shall be the duty of a Police Officer-*
(a) to regulate and control the traffic in the streets, to prevent obstructions therein and to the best of his ability to prevent the infraction of any rule or order made under this Act or any other law in force for observance by the public in or near the streets;

(b) to keep order in the streets and at and within public bathing, washing and landing places fairs, temples, and all other places of public resort and in the neighbourhood of places of public worship during the time of public worship;

(c) to regulate resort to public bathing, washing and landing places, to prevent overcrowdig thereat and in public ferry-boats and to the best of his ability, to prevent the infraction of any rule or order lawfully made for observance by the public any such

place or on any such boat.

68. *All persons shall be bounded to conform to the reasonable directions a Police officer given in fulfilment of any of his duties under this Act.*

71. *It shall be the duty of the Police to see that every regulation and direction made by any authority under sections 43, 55, 56, 57 or 63AA is duly obeyed to warn persons who from ignorance fail to obey the same and to arrest any person who wilully disobeys the same.*

72. *Any Police officer may, without any order from a Magistrate and without*
(1) any person who has been concerned in an offence punishable under section 121 or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists, of his having been concerned in such offence;

(2) any person who contravences a rule or order under clause (x) of subsection (1) of section 33 or an order or an order or notification under section 36, 3 7, 56 57 or 63AA;

(2A) any person who contravences any order made under sub-section (I) of section 63 A;]

(3) any person who commits an offence punishable under section 122 or section 136.

73. *Any Police officer may, without an order from a Magistrate and without a warrant, arrest any person committing in his presence any offence punishable under section 3, 3A, 4, 5, 6 or 6C of the Prevention of Cruelty to Animals Act, 1890 or of that Act as in force in the Saurashtra area of the State of Gujarat.*

73A. Section 6B of the Prevention of Cruelty to Animals Act, 1890, as in force in the Bombay area of the State of Gujarat (hereinafter in this section and in section 74, 75 and 77 referred to as the said Act) is, for the purposes of sections 74 to 77 (both inclusive) hereby extended to, and shall be in force in, the remaining areas of the State of Gujarat he and in consequence thereof, any provisions corresponding thereto or dealing with the like matter, force in any such areas of the State shall be

deemed to have been substituted by the aforesaid provisions of the said Act."

11.3 The plain reading of the aforesaid provisions of the aforesaid Acts would clearly indicate that the nature of duties and functions of the Home Guards and the Police Officers of the State are neither similar nor equal. Since the nature of duties and work of the Home Guards and the Police Personnel of State are not equal, principle of equal pay for equal work cannot be applied, as argued by Mr. Khare, learned advocate for petitioners.

12. It is true that in a case of ***Gajaji Gopaji Jadeja (supra)***, the Co-ordinate Bench of this Court granted benefits of regular pay and other service and retiral benefits as admissible and payable to State Government servants to Border Wing Home Guards. The facts of that case are not so similar to the facts of present case, inasmuch as the appointment of Border Wing Home Guard is different from appointment of ordinary Home Guard, which is noticeable from the pleadings and arguments canvassed before this Court in that matter.

12.1 The decision of Hon'ble Apex Court in the case of ***Pantha Chatterjee (supra)***, followed by Co-ordinate

Bench of this Court while accepting the plea of Border Wing Guards and upon which heavy reliance placed by Mr. Khare, learned advocate for the petitioners, is also not helpful to the case of the petitioners, inasmuch as the nature of the duties and continuous service required to be discharged by Border Wing Home Guards unlike the ordinary Home Guards. The present petitioners are appointed as ordinary Home Guards, whereby as per object and scheme of the Act, 1947, as and when contingency arises, a competent authority would call upon them to discharge their duties and accordingly, pay their daily allowances as per fixed rate. Thus, petitioners can very well pursue their vocation in free time unlike Border Wing Home Guards whose services require continuously; accordingly, it treated as perennial in nature. Further, it appears that the criteria set for recruiting Border Wing Home Guards are different from the ordinary Home Guards, which is also referred by Co-ordinate Bench of this Court in the aforesaid decision.

13. At this stage, it is apt to refer the decision of Hon'ble Apex Court in the case of ***Grah Rakshak, Home Guards Welfare Association (supra)***, wherein in a

somewhat similar claim raised by the ordinary Home Guards, to give relief of regularization, was turned down, wherein held thus:

> *"30. The learned counsel appearing on behalf of the appellants had taken plea that the appellants have been working as Home Guards for period ranging from 10 to 30 years and therefore in view of the decision in State of W.B. v. Pantha Chatterjee [State of W.B. v. Pantha Chatterjee, (2003) 6 SCC 469 : 2003 SCC (L&S) 894] they are also entitled for regularisation of their services. However, such contention has been opposed by the learned counsel for the State(s). They relied upon another decision of this Court in State of Manipur v. Moirangninthou Singh [(2007) 10 SCC 544 : (2008) 1 SCC (L&S) 35] . In the said case, the members of the Manipur Home Guards filed different writ petitions in the Gauhati High Court inter alia praying that their services be regularised in the Home Guards and that they be given regular pay scales. In the said case, the Court noticed that Home Guards have been constituted as a voluntary organisation for service in emergencies. Their initial appointment was for three years after which it is at the discretion of the Commandant, subject to approval of the Commandant General to reappoint a member of the Home Guards. The Court further noticed that there was an age-limit of 50 years. In the said case, the Court held : (SCC p. 546, para 7)*
>
> > *"7. We are of the opinion that in view of the Constitution Bench judgment of this Court in State of Karnataka v. Umadevi (3) [State of Karnataka v. Umadevi (3)(2006) 4 SCC 1 : 2006 SCC (L&S) 753] this Court cannot direct regularisation in service. Since the court has no power to direct regularisation, it also follows that it has no power to direct grant of benefits payable to the regular employees."*
>
> ***The Court further held : (Moirangninthou Singh case [(2007) 10 SCC 544 : (2008) 1 SCC (L&S) 35] , SCC p. 547, para 11)***
>
> > *"11. **A perusal of the provisions of the Home Guards Act and the Rules show that the Home Guards was meant to be a reserve force which was to be utilised in emergencies**, **but it was not a service like the police,***

> ***paramilitary force or army, and there is no right in a member to continue till the age of 55 years.*** *We approve the view taken by the Delhi High Court in Rajesh Mishra v. Govt. (NCT of Delhi) [2002 SCC OnLine Del 483 : (2002) 98 DLT 624] .”*

34. In the form filled up by the Home Guards volunteers of each State, the Home Guards have specifically mentioned that they undertake to serve as a member of the Home Guards at any time and place in India if they are called out for training or duty. This is evident from Form I of the Himachal Pradesh Home Guards Act, 1968 which shows that they are entitled for temporary allowance and in case of injury sustained or disability occurred during the duty they are entitled for disability pension.

37. It is not the case of the State Government that enrolment/appointments of the Home Guards were back door 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) [State of Karnataka v. Umadevi (3)(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , is not applicable in the case of the appellant 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.

38. 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 throughout the year can neither be equated with that of the police personnel.***

39. *In view of the discussion made above, no relief can be granted to the appellants either for regularisation of services or for grant of regular appointments, hence no interference is called for against the judgments [Grah Rakshak Home Guards Welfare v. State, WP (C) No. 645 of 2005, order dated 26-5-2008 (HP); Hardev Singh v. State of Punjab, 2013 SCC OnLine P&H 2918; Daya Singh v. State of Punjab, WP (C) No. 7365 of 2013, order dated 8-4-2013 (P&H); Balbir Singh v. State of Punjab, WP (C) No. 12859 of 2013, order dated 31-5-2013 (P&H); Anant Prasad v. Union of India, 2013 SCC OnLine Del*

> *314; Surender Kumar v. Govt. (NCT of Delhi), WP (C) No. 3007 of 2010, order dated 20-5-2013 (Del)] 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 the 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."*
>
> *(emphasis supplied)*

14. Thus, in view of the aforesaid facts and circumstances and keeping in mind the ratio of the decision of the Hon'ble Apex Court in the cases of ***Ksh. Moirangninthou Singh (supra)*** and ***Grah Rakshak, Home Guards Welfare Association (supra)***, I am of the view that the petitioners - Home Guards are not entitled to the claim the regular pay and other service and retirement benefits as claimed in these petitions.

CONCLUSION:

15. In view of the foregoing reasons, it is held that duties and functions of the Home Guards appointed pursuant to the Act, 1947 are not equivalent to those performed by the police officers under the Act, 1951. Accordingly, the petitioners have failed to make out a case for equal pay for equal work.

16. Before parting with, as observed by Hon'ble Apex Court in the case of ***Grah Rakshak, Home Guards Welfare Association (supra)***, I am also of the view that the rate of daily duty allowance paid to the Home Guards if pay for 30 days (a month) is less than minimum of the pay to which the police personnel of the State are entitled to, then the State should consider such aspect, and appropriate decision in that respect may be taken, thereby such daily duty allowance rate may be revised, so the Home Guards may get at least the appropriate daily duty allowances as and when called for duty, which may be par with minimum of the pay (per day) received by the police personnel of the State.

17. In view of the foregoing conclusion, I do not find any merit in the present captioned petitions, which are required to be dismissed and, thus, are hereby **dismissed,** albeit the aforesaid aspect may be considered by the State. Rule stands discharged. No order as to costs.

(MAULIK J.SHELAT,J)

DIWAKAR SHUKLA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: DIWAKAR SHUKLA(HC01778), PRIVATE SECRETARY, at High Court of Gujarat on 19/02/2026 12:20:15