

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 571 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J. SHELAT**

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Approved for Reporting	Yes	No
		✓
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SHRAVANJI BACHUBHAI VAGHELA & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR HIMANSU M PADHYA(1611) for the Petitioner(s) No.

1,10,11,12,13,2,3,4,5,6,7,8,9

MS FORUM BIMAL SUKHADWALA, ASSISTANT GOVERNMENT PLEADER
for the Respondent(s) No. 1,2

NOTICE SERVED BY DS for the Respondent(s) No. 4

REFUSED SERVED (N)(10) for the Respondent(s) No. 3

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CORAM: HONOURABLE MR. JUSTICE MAULIK J. SHELAT**Date : 13/03/2026****JUDGMENT**

- RULE** returnable forthwith. Ms. Forum Bimal Sukhadwala, learned Assistant Government Pleader appearing for the respondent Nos.1 and 2, waives service of notice. With the consent of the learned advocates, matter is taken up for hearing.

2. Heard Mr. Nirmal Singh Sekhawat, learned Advocate appearing on behalf of Mr. Himansu M. Padhya, learned Advocate for the petitioners. Ms. Forum Bimal Sukhadwala, learned Assistant Government Pleader appearing for the respondent Nos.1 and 2.
3. The present writ petition is filed under Article 226 of the Constitution of India, seeking the following reliefs:

“(A) This Hon'ble Court may kindly be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or directing the respondents to continue the service of the petitioners as Home Guard;

(B) Pending hearing and final disposal of this petition, this Hon'ble Court may pleased to restrained the respondents from terminating the service of the petitioners;

(C) Pending hearing and final disposal of this petition, this Hon'ble Court may pleased to direct the respondents to not replace the petitioners by other candidates;

(D) Ad-interim relief in terms of Para (B) may kindly be granted.

(E) This Hon'ble Court may kindly be pleased to pass appropriate order or relief in the facts and circumstances of the case."

4. SUBMISSIONS OF THE PETITIONERS:

4.1. At the outset, Mr. Sekhawat, learned Advocate for the petitioners, would state that the issue germane to the matter is covered by the decision of this Court dated 02.12.2025, passed in Special Civil Application No. 19848 of 2018. It is submitted that all petitioners were appointed as Home Guard by the respondent and their services were terminated without issuing any notice and without observing the principles of natural justice and as such, none of the petitioners have received any termination order. It is submitted that an opportunity may be granted in favour of the petitioners to approach the appellate authority as was done in the said case.

4.2. Making the above submissions, Mr. Sekhawat, learned Advocate, would request this Court to allow the present writ petition.

5. SUBMISSIONS OF THE RESPONDENT NOS.1 & 2:

5.1. *Per contra*, Ms. Sukhadwala, learned AGP, would submit that

as per the aforementioned cited decision, it is settled that there was no need to issue any prior notice or opportunity of hearing to be given to the petitioners before effecting the order of termination. Nonetheless, under the instructions of Mr. Himatsinh Rathod, the officer of District Commandant, Palanpur, Banaskantha, Gujarat, Ms. Sukhadwala, learned AGP, would state that there were orders passed by the respondent terminating the services of the petitioners which are placed on record, but candidly accepts that there is no proof of actual service of the order of termination upon the petitioners.

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

6. No other and further submissions are being made.

ANALYSIS:

7. Having heard learned Advocates appearing for the respective parties and after examining the submissions of the petitioners, the issue germane to the matter is squarely covered by the aforementioned decision passed by this Court, wherein, it is held thus:

[7] Nonetheless, when this Court examined order passed against petitioners by Commandant, it appears to have been passed under sub-section (1A) of Section (6B) of the Act, 1947, whereby provision of sub-section (2) of Section (6B) of the Act, 1947 would not be applicable thereby, observance of prior notice and or any opportunity of hearing not required to be given to petitioner.

[8] Nevertheless, when respondent - authority thought it fit to discontinued their services by issuing order of discharge, as pointed out in their reply, it would be expected from the authority to serve the copy of such discharge order, passed as per subsection (1A) of Section (6B) of the Act, 1947, thereby, petitioners, being aggrieved against such order of discharge, may file an appeal before the Commandant General.

[9] Learned AGP tried to substantiate her submissions by drawing attention to the different documents placed on record, whereby, tried to substantiate her plea that at given point of time, petitioners were served with the notice of order of discharge. Nonetheless, none of such documents would indicate that such order was in fact received / served upon the petitioners. As noted hereinabove, all such orders appear to have been sent through normal mode as per the practice prevailing in the Office of respondent.

[10] Be that as it may, when it has come on record that services of the petitioners have been discharged by order of competent authority i.e. Commandant, as per subsection (3) of Section (6-

B) of the Act, 1947, they can avail the alternative remedy by approaching the competent authority. Furthermore, before approaching this Court by way of this petition, none of the petitioners have ever approached the respondent – authority so as to verify whether they are still continued in service or discharged. Moreover, they have not even made any formal representation before the respondent – authority; thereby to claim that respondent/s be assigned them work.

[11] Considering the aforesaid aspect of the matter, at this stage, this Court would not like to entertain this petition by relegating the petitioners to avail the alternative remedy of filing an appeal before the Commandant General, if so aggrieved by the order of discharge passed by the Commandant against them.

[12] At the same time, it is a plea raised by the petitioners that they were not served with the order of discharge, if so advised, petitioners can get such order collect from the office of respondent no.3- District Commandant, Palanpur, District – Banaskantha, who shall have to provide the copy of the discharge order to each petitioner as the case may be.

[13] It goes without saying that when petitioners will receive such copy of discharge from respondent No.3, period of limitation to prefer an appeal would start from such date and within a period of limitation, if any appeal will be filed, the Appellate Authority is hereby requested to consider it in accordance with law, without being influenced by any of the

observations so made by this Court herein above."

(emphasis supplied)

8. In view of the aforesaid facts and circumstances and having considered the fact that in the present case also, the petitioners have not been actually served with the copy of the termination order / order of discharge from the respondent, the same can be received by the petitioners from respondent No. 3-District Commandant, Palanpur, District Banaskantha, upon their visit to the office of respondent No. 3, who shall provide the discharge order to each petitioner, as the case may be.
9. It goes without saying that when the petitioners will receive such copy of discharge order from respondent No. 3, the period of limitation to prefer an appeal would start from such date and then after, within stipulated period of limitation, an appeal may be filed. The Appellate Authority is hereby requested to consider the appeal in accordance with law, without being influenced by any of the observations so made by this Court herein above.
10. It is hereby further observed that all petitioners shall have to visit the office of respondent No. 3 on or before 31st March,

2026 to collect their order of discharge passed by the Commandant, failing which it shall be assumed that they have been deemed to have received it on 31st March, 2026.

11. In view of the foregoing reasons and conclusion, the present writ petition is not entertained and is accordingly dismissed, albeit with the aforesaid liberty and observations. Rule is discharged. No order as to costs.

NILESH

(MAULIK J. SHELAT,J)