

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal Writ No. 234/2024

- 1. The State of Rajasthan, through the Principal Secretary to the Government, Department of Home, Government of Rajasthan, Government Secretariat, Jaipur.
- 2. The Director General of Police, Home Guard and Civil Defence, Jaleb Chowk, City Palace, Jaipur (Rajasthan)
- 3. Commandant (Superintendent of Police) Home Guards, Jaipur (Rajasthan).

----Appellants

Versus

Home Guard Samanvia Samiti, District Jaipur having its Registered office at D-10, First Floor, Anaj Mandi, Chandpole, Jaipur through its President Shri Anand Prakash Tokasiya S/o Shri Navratan Mal Tokasiya, Age About 44 years, Resident of 74, Ganesh Vihar, Sirsi Mod, Jaipur (Raj.).

----Respondent

For Appellant(s)	:	Mr. Rajendra Prasad Advocate General assisted by Ms. Harshita Thakral Advocate and Ms. Dhriti Laddha Advocate.
For Respondent(s)	:	Dr. Abhinav Sharma Advocate

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

25/10/2024

- 1. Heard.
- 2. Upon consideration of the cause shown in Application No.232/2024 seeking condonation of delay in filing the appeal, the delay in filing the appeal is condoned.
- 3. The application is allowed accordingly.
- 4. Heard on prayer for stay.

5 Learned Advocate General argued that the direction issued by the learned Single Judge placing reliance upon the order of Hon'ble Supreme Court in **Civil Appeal No.2759/2015 [Grah Rakshak, Home Guards Welfare Association Vs. State of H.P. & Ors.]**, is not tenable in law, as Home Guard volunteers do not come under purview of the Rajasthan State Service Rules, rather the Home Guards are members of volunteer organization which is purely temporary in nature. Home Guard is neither a government service nor they have a permanent payment. They are enrolled as members in Home Guard department as auxiliary to the police force and in security services for a fixed time period and are deployed at the time of law and order, emergency duties, election duties etc. After the deployment for a fixed period is over, they are free to do any work for their livelihood. It is further submitted that in compliance of the order dated 26.04.2017 passed by the High Court in **D.B. Special Appeal (Writ) No.741/2015 [State of Rajasthan & Ors. Vs. Ishwar Singh & Ors.]**, honorarium is being paid at fixed rates, which has been revised from time to time. In addition to this, daily duty allowance is also paid for the days, on which the Home Guard performs his duties. Learned Advocate General highlighted that the judgment of Hon'ble Supreme Court in the case of Grah Rakshak(*supra*) would not apply in the case of Home Guards working in the State of Rajasthan, as the engagement duties, functions and remuneration of Home Guards in the State of Rajasthan are governed by special enactment governing Home Guards in the State of Rajasthan known as Rajasthan Home Guards Act, 1963 and Rajasthan Home Guards Rules, 1962, which were not subject matter of

consideration before the Hon'ble Supreme Court in the case of Grah Rakshak(*supra*). That was the case of the members of Home Guards working in the State of Himanchal Pradesh, Punjab and NCT Delhi, and were governed by entirely different set of rules framed by the respective states. The State of Rajasthan was not a party therein. In view of the enactment and the rules governing terms and conditions of Home Guards in the State of Rajasthan, directions contrary to the statutory provisions, without challenging those enactments and rules, could not be issued by the learned Single Judge.

6. On the other hand, learned counsel for the respondent would submit that the learned Single Judge passed the order relying upon the decision of Hon'ble Supreme Court in the case of Grah Rakshak(*supra*), wherein, Hon'ble Supreme Court clearly held that as the services of Home Guards are utilized during the emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel, State should pay them 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. He submits that learned Single Judge has only directed to extend similar benefits to Home Guards in the State of Rajasthan, as granted by Hon'ble Apex Court in the case of Grah Rakshak(*supra*).

7. We find that the entire basis of the order passed by the learned Single Judge is the order of Hon'ble Apex Court in the case of Grah Rakshak(*supra*) and another order passed in **Contempt Petition (c) Nos.699-700 of 2015 [Tej Singh & Ors. Vs. Sarvesh Kaushal & Anr.]**. The scheme of payment,

terms & conditions and remuneration, as provided under the Rajasthan Home Guards Act and the Rajasthan Home Guard Rules governs the terms and conditions of engagement of Home Guards including their functions, duties, term of office, remuneration and responsibilities of Home Guards. Rule 18 provides for remuneration. The order of the learned Single Judge rests on the direction issued by Hon'ble Apex Court which deals with the case of terms and conditions of service of Home Guards in other States and not in respect of the terms and conditions of engagement of Home Guards in the State of Rajasthan. It has also been stated that earlier a petition was filed by one Ishwar Singh, in whose case an order was also passed and the matter was taken to appeal. The Appellate Court passed an order on 26.04.2017 in **D.B. Special Appeal (Writ) No.741/2015 [State of Rajasthan & Ors. Vs. Ishwar Singh & Ors.]**. In that case also, the order passed by Hon'ble Supreme Court in the case of Grah Rakshak(*supra*) was taken into consideration. In compliance of the directions, the State of Rajasthan issued order on 30.04.2018 providing daily honorarium to Home Guards when they are deputed in law and order duties, driver duties, security duties in Government/Semi-Government departments and institutions, whereas, volunteers who are deployed against Class IV vacancies are provided honorarium of Rs.590 per day. In 2023, the honorarium has been further revised to Rs.693/-, to Rs.797/- and to Rs.679/- respectively. They are also been provided travelling allowance and rest allowance depending upon the assignment of duty and the distance of the place where the duty is to be performed. They are also being provided washing allowance.

8. In view of the above consideration, we are inclined to stay the effect and operation of the impugned order passed by the learned Single Judge, subject to the condition that the appellants shall continue to make payment to the Home Guards as per the Government order dated 30.04.2018, during the pendency of the appeal.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

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