

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 21376/2018

Home Guard Samanvaya Samiti, District Jaipur

-----Petitioner

Versus

State Of Rajasthan And Ors.

-----Respondents

For Petitioner(s) : Mr. Abhinav Sharma through VC

For Respondent(s) : Mr. Kavish Dubey for
Mr. Kamal Kant Vyas

HON'BLE MR. JUSTICE SAMEER JAIN

Order

21/02/2022

1. The petitioner has approached the Court under Article 226 of the Constitution of India with the following prayer:-

"(a) by issue of an appropriate writ, order or direction in the nature thereof direct the respondents to grant the benefits of the Employees' Provident Fund to the members of the Home Guards of the State of Rajasthan by applying the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and to pay the arrears according to the provisions of the said Act of 1952 to the Members of the Home Guards of the State of Rajasthan treating them eligible for the membership of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952;

(b) by issue of an appropriate writ, order or direction in the nature thereof direct the respondents that the Home Guards Welfare Fund cannot be used for any purpose other than those specified in the Home Guards Welfare Fund Scheme as issued by the Director General and Commandant General of Home Guards, Government of Rajasthan, Jaipur from time to time;

(c) by issue of an appropriate writ, order or direction in the nature thereof direct that the audit of the accounts of the Home Guards Welfare Fund be got conducted by the Accountant General of the State of Rajasthan for all the years from the beginning of the scheme and if any deficiency and misuse and misappropriation is found in the use of the Home Guards Welfare Fund then such delinquent officers be punished and the amount be recovered from them with interest;

(d) by issue of an appropriate writ, order or direction in the nature thereof direct the respondents to make payment of the amount contributed by the Member with interest at the rate of 12% per annum with minimum of Rs. 10.00 lakhs at the time of superannuation as Home Guard in the State of Rajasthan;

(e) by issue of an appropriate writ, order or direction in the nature thereof direct the respondents to refund the money used from the Home Guards Welfare Fund for other purposes than for the welfare of the Home Guards in the account of the Home Guards Welfare Fund with interest at the rate of 12% per annum;

(f) award costs of this writ petition to the petitioners; and

(g) award such other and further relief/s, as may be deemed just and expedient in the facts and circumstances of the present so as to give full relief to the petitioner."

2. Learned counsel for the petitioner submits that by virtue of circular dated 08.05.2017, 10% deduction is made qua "Home Guards Welfare Scheme". He submits that a sum of Rs.600/- approximately is paid on per day basis to the Home Guards when they are on duty. Out of which, 10% amount is deducted and deposited in the said fund to meet out contingency and safeguard

Home Guards against any injury or accident during the course of duty.

3. Learned counsel has drawn our attention to the reply submitted by the State wherein, it is stated and admitted that out of the fund, the benefit is also disbursed to permanent staff other than the Home Guards. He further submits that the amount is spent on water coolers, tin sheds, refreshment and other activities, which are not qua the Home Guards. Rather, he apprehends that the said amount is misused and misappropriated by higher officers on their luxury. The State has also not reflected that the said amount is scrutinized and audited.

4. Learned counsel has drawn our attention to the provisions of Section 2 (f) of the Employee Provident Fund and Miscellaneous Provisions Act, 1952 wherein, he submits that employee includes a person on contract, which is applicable qua the Home Guards. He submits that the respondents should be directed to open Provident fund account qua the petitioner's Society and members therein specially when continuously notices are issued under the Act of 1952 by the competent authority.

5. In the light of above submissions, this Court directs the respondent No.2, The Director General and Commandant General of the Home Guards to remain present before this Court on 07.03.2022 at 2:00 pm to explain the above said submissions specially when the State is not represented by the concerned Additional Advocate General, further to explain the fact that when inspite of having 28 crores of Rs. lying to the credit of fund on 31.03.2018 and as per Section 2(f) of the Act of 1952, Home Guards qualify to be employees, why registration is not taken under the Act of 1952 inspite of repeated notices by the

6. List the matter on 07.03.2022 at 2:00 pm.

Simple Kumawat/23

