

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 90/2017**

- 1) Homeguard Vikas Samiti, Maharashtra  
through its State President Pramod Yashwant Rao Telang,  
47 years, S/o Shri Yashwant Govind Rao Telang,  
R/o Kelwad Ward no.4, H. Savner,  
Distt. Nagpur, (MH), Pin-441112.
- 2) Pramod Yashwant Rao Telang,  
S/o Shri Yashwant Govind Rao Telang,  
R/o Kelwad Ward no.4, H. Savner,  
Distt. Nagpur (MH), Pin-441112.

**Applicants.**

**Versus**

- 1) State of Maharashtra,  
through the Principal Secretary, Deptt. of Home  
Affairs IX floor new Administrative Building,  
Opp. Mantralaya, Mumbai-400 032.
- 2) Commandant General Home Guard & Director Civil Defence,  
Old Secretariat, Annexe Building, 1<sup>st</sup> floor, M.G. Road, near  
Elphnistan College Fort, Mumbai-400 032.

**Respondents**

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**Shri A.J. Gilda, V. Mahavar, Advocates for the applicant.**

**Smt. M.A. Barabde, Id. P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J).**

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**JUDGEMENT**

**(Delivered on this 5<sup>th</sup> day of May,2017)**

Heard Shri Mrigendra Singh, Id. Senior counsel with Shri A.J. Gilda, Id. Counsel for the applicants and Smt. M.A. Barabde, Id. P.O. for the respondents.

2. This O.A. is being decided with the consent of learned counsel for the respective parties. The applicants, Home Guard Vikas Samiti Maharashtra is an Association and is seeking parity for grant of benefit of regular pay scale, emoluments, promotions, pensionary benefits and retiral benefits / privileges at par with the permanent employees of Home Guard as they are discharging the same duties and functions under the Bombay Home Guard Act,1947. They are also claiming parity with Constables of regular Police establishment as its Members are discharging the same functions and duties as being discharged by the Constable of regular Police establishment.

3. The Members of the applicant's Association have been appointed as Members of the Home Guard as per the Section 3 of the Mumbai Home Guard Act,1947. The members of the Petitioner's association are continuously rendering their services. They are called out for duties only for 120 days in a year and for rest of remaining days they remained unemployed. The members of the Association are performing same duties and functions as are being performed by the regular Police Force under Home Department of State of Maharashtra. But no proper emoluments and pay is paid to the

members of the Association. The members of the Association are being victimized and are subjected to inadequate pay and service conditions.

4. The applicant has claimed following reliefs :-

*I) To direct the respondents to declare the members of the Petitioner's Association as holders of civil post in the establishment of respondents and to grant all consequential benefits to treat them at par with the regular employees and Officers of Police establishment, i.e., Home Department under the State Government.*

*II) To direct the respondents to frame the rules regarding the conditions of the service of the members of the petitioner's association and to grant all consequential benefits including the benefits of salary, allowances, increment, pay scale, promotions leave, provident fund, gratuity, pension and retiral benefits etc.*

*III) To direct the respondents to pay salary and other benefits to the members of the petitioner's association at par with officers and constables of regular police establishment and to grant arrears of salary.*

*IV) To direct the respondents to absorb the services of the members of the petitioner's association in the establishment of the respondents irrespective of the age bar.*

*V) To direct the respondents to stop system of calling off duty and to keep employed the members of the petitioner's Association throughout the year up till they attain age of superannuation.*

*VI) To direct the respondents to stop the system of re-enrollment of the members of home guards after every three years on the failure of which they are deemed to be discharged from services.*

*VII) To issue a command directing the respondents to produce the entire records pertaining to the present case for kind perusal of the Hon'ble Tribunal.*

*VIII) To grant any other relief as the Hon'ble Tribunal deems fit in the present case and to allow the instant petition with costs.*

5. Admittedly for the same reliefs, the applicant approached the Hon'ble High Court by filing W.P. No. 1153/2015 and the Hon'ble High Court vide order dated 27/9/2016 was pleased to direct the applicant to approach this Tribunal. The relevant order dated 27/9/2016 in W.P. No. 1153/2015 is as under :-

*“(6) In the light of the above observations, we accept the objection as raised on behalf of the State Government to hold that the present petition is not maintainable and the remedy for the petitioner is to approach the Maharashtra Administrative Tribunal under the Administrative Tribunals Act.*

*(7) The petition is accordingly disposed of with liberty to the petitioner to approach the Administrative Tribunal. All issues on merits of the matter are expressly kept open. No order as to costs”.*

6. It is stated that this order was confirmed by the Hon'ble Apex Court and therefore the applicant has approached this Tribunal for the reliefs as already stated.

7. The respondents in their affidavit-reply have denied the claim and submitted that the Home Guards are expected to assist Police in any situation when they are called but the members of the Home Guard are not Govt. servants. It is a voluntary organization. It is stated that the Home Guards set up is throughout the country is in the nature of a voluntary organization and the work done by the applicant volunteers is entirely different from that of regular police personnel and therefore they are not entitled to claim any benefit of regular employees. There is no master and servant relationship between the applicant Home Guards and the respondents. Section 2 (1) of the Bombay Home Guard Act, in clear and unambiguous words provides that the State Government shall continue a volunteer boys called the Home Guards and accordingly the organization is constituted in the Maharashtra State. The applicants have no enforceable right in their favour.

8. The applicants file rejoinder tried to justify the case. It is stated that the members of the applicant's association are treated as public servants under Section 21 of the IPC. It is further stated that in case of Home Guards of Madhya Pradesh, the Apex Court has

directed to frame appropriate rules and regulations for regulating the working conditions of the Home Guards and on the same basis the applicant's association is entitled to claim reliefs. The learned counsel for the applicant has invited my attention to the Judgment delivered by the Madhya Pradesh High Court, Bench at Jabalpur in W.P.No. 10000 of 2010 in the case of **Home Guard Sainik Evam Pariwar Kalyan Sangh & Ors. Vs. State of Madhya Pradesh & Ano.** The said order was passed on 02/12/2011. In the said case the Hon'ble High Court has considered the duties of the Home Guards as well as regular Police force of similar cadre and observed in para-48 & 49 are as under:-

*“48. Under such circumstances, even though this Court deems it appropriate to leave it to the State Government to take a final decision into the matter, but with a view to do immediate justice to some extent to the petitioners, the interest of not only justice, but the Constitutional mandate requires that till a final decision is not taken by the State Government, as a measure of interim relief or interim benefit, some relief should be granted to the petitioners so that their grievance are mitigated to some extent and the violation of their human and Constitutional rights are to some extent remedied and it was taking note of all these factors that an interim order was passed by this Court on 22-9-2011, directing the respondents at least to give to each of the petitioners the minimum of the pay, payable to a Constable in the Police Department and in doing away with the principle of calling of or rotation of duty.*

*49. In view of the aforesaid and in the facts and circumstances of the case, for the grounds and reasons indicated hereinabove, these petitions are allowed in part. Even though this Court does not deem it appropriate to issue*

*any 'mandamus' with regard to the prayer made by the petitioners for declaring them as civil post holders or for granting them regular service along with regular benefits available to a personnel in the Police Department, the following directions are issued in the facts of the present case :”*

*(a) On receipt of a certified copy of this order, the State Government shall take note of the recommendations made by the State Human Rights Commission and if required after constituting a High Level Committee or Commission to go into the questions and recommendations made by the Human Rights Commission and after studying the organization, working set up and other factors in the establishment of the Home Guards, make endeavour to lay down schemes, rules or regulations for regulating the working of the Home Guards establishment and if required, may formulate statutory rules and regulations in this regard, for prescribing their service conditions.*

*(b) Till the aforesaid exercise is not completed, all the employees working in the Home Guards Department and who are petitioners before this Court, so also other similarly situated persons, who may have not filed writ petitions, be granted salary at the minimum/basic of the pay prescribed for the lowest post, i.e., Constable in the Police Department, without any running pay scale, allowances, etc.*

*(c) All the employees would be entitled to the minimum of the pay scale, i.e., the basic of the pay, as is payable to a Constable in the Police Department, and the said benefit shall be extended to the employees with effect from 1-1-2011.*

*(d) The employees would be paid the aforesaid amount with revision of basic pay, if any, in the corresponding Police Department from time to time hereafter, till a final scheme or regular rules and regulations are not formulated for working in the Home Guards Organization.*

*(e) Apart from the aforesaid, the system of calling of duty shall be done away with and the employees shall be employed throughout the year subject to their being*

*physically fit or otherwise entitled to work in accordance to law."*

9. The learned counsel for the applicants submit that the said decision of the Hon'ble High Court of Madhya Pradesh has been confirmed by the Hon'ble Apex Court in **State of Madhya Pradesh & Ors. Vs. Damodar Malviya and Ors.**, on 21/1/2015 by making following observations :-

*" In our opinion, the State Government is yet to frame the rules and regulations for regulating the working conditions of the respondents/ home guards. This exercise requires to be done by the State Government as early as possible. Therefore, we direct the State Government to frame appropriate rules and regulations for regulating the working conditions of the respondents/ home guards as early as possible at any rate within eight months from the receipt of the copy of this Court's order.*

*Till such time the petitioner/ State shall pay to the respondents/ home guards the honorarium that is now fixed by the State Government on the recommendations made by the high level Committee from the date such recommendation is made by the high level committee.*

*The special leave petitions are disposed of.*

*As a sequel to the above, all pending application (s) stand disposed of."*

10. The learned counsel for the applicants has invited my attention to the provisions of Sections 6 to 9 of the Bombay Home Guard Act,1947 and also to the Section 8 of the Maharashtra Police Act,1951 and submitted that the members of the Home Guards have to perform same duties as are to be performed by the police



constables. However, applicants are not being paid proper pay and in fact they are being harassed.

11. The learned P.O. submits that the Hon'ble Apex Court has already dealt with the matter of similar nature wherein the entire scheme under Home Guards Act has been considered by the Hon'ble Apex Court. The learned P.O. has invited my attention to the Judgment delivered by the Apex Court in the case of **Jiban Krishna Mondal & Ors. & Vs. State of West Bengal & ors.** In the said Judgment the Hon'ble Apex Court has observed in para no. 28 to 30 as under :-

*“ (28) A Careful perusal of genesis of Home Guards and its role will show that the Organization was always meant to be voluntary and it consisted of people from all walks of life. In fact Government servants were also enrolled in the Home Guards to be called as and when the need arises. A large number of State enactments i.e. the Andhra Pradesh Home Guards Act, 1948, the Bombay Home Guards Act, 1947, the Assam Home Guards Act, 1947, the Manipur Home Guards Act, 1966, the Madhya Pradesh Home Guards Act, 1947, the Punjab Home Guards Act, 1947, the Rajasthan Home Guards Act, 1963, etc. placed before this Court in compilation by the learned Attorney General during the hearing makes it clear that the provisions of all these enactments are more or less similar. The voluntary nature is a basic feature of the Home Guards.*

*(29) Majority of the appellants have attained the maximum age and are no more members of the Home Guards. The appointment letters enclosed by the remaining category of appellants do not suggest that they are performing duty all over the year like any Government servant. There is nothing on the record to suggest the master-servant relationship. They were appointed pursuant to Home Guards Rules, 1962*

*and it is made clear that their services are voluntary and will not get any pay but the duty allowance as may be fixed by the State Government from time to time.*

*(30) In that view of the matter, we hold that the appellants are not entitled for regularization of service. Further, in absence of any comparison of duties, responsibilities, accountability and status, they may not be equated with the Police Constables or personnel to claim parity with the pay or scale of pay as provided to the Police personnel. The High Court by the impugned judgment and orders rightly refused to grant regularization of their services. We find no merit in these appeals and they are accordingly dismissed.”*

12. The learned P.O. has also invited my attention to the Judgment delivered in case of **Ratanji A. Dubash Vs. State of Maharashtra, reported in [1970 Mh.L.J.,626]**. In the said Judgment the Hon'ble Apex Court has observed as under :-

*“The argument of Mr. Sanghavi has been that, in this decision, a member of the Home Guards has been held to be a person holding a civil post under the State and the protection under Article 311 has been held to be available to him, and since the protection of Article 311 is available to Government servants only, Mr. Sanghavi has urged that a member of the Home Guards should be regarded as a State Government servant. He also urged that the expression 'person holding a civil post under the State' was equivalent to the expression 'member of civil services of a State'. It is difficult to accept Mr. Sanghavi's contention for more than one reason. In the first place, neither in the affidavit in reply nor in the correspondence has any such plea been raised on behalf of the respondent viz. that Dr. Sheth is a State Government servant because he holds a civil post under the State. In fact, as I have indicated earlier, the only plea specifically raised in the affidavit in reply has been that Dr. Sheth is a State Government servant, inasmuch as he is a member of the Home Guards organisation under the Bombay Home Guards Act, and I have already held above*

*that a member of the Home Guards organisation is not a State Government servant. Apart from that, Article 311 of the Constitution itself makes a distinction between two categories of persons, namely, a person who is a member of civil service of a State (meaning thereby a member of regular cadres of service of the State Government) and a person holding a civil post under the State, and what Article 311 provides is that even if a person were not a member of regular civil services of a State but if he were to hold a civil post under a State, the protection contained in it would be available to him. Lastly, in my view, it is abundantly clear that, in the Nagpur case, the High Court was considering the question whether a person who was a member of the Home Guards organization under the Central Provinces and Berar Home Guards Act was a person holding a civil post under the State or not, for the purpose of determining the point whether such person would be entitled to the protection under Article 311 of the Constitution, and the High Court took the view that, for purposes of Article 311 of the Constitution, a person who had been appointed a member of the Home Guards under the Central Provinces and Berar Home Guards Act, was a person holding a civil post under the State. I am not concerned in the present case with the question as to whether Dr. Sheth, as a member of the Home Guards: organization under the Bombay Home Guards Act of 1947, would be a person holding a civil post under the State for the purpose of Article 311 of the Constitution. The question for consideration in the present case arises in a different context altogether, and the question is whether a member of the Home Guards organization under the Bombay Home Guards Act of 1947 is a State Government servant or not, so that the allotment of requisitioned premises in his favour would be sustained, and that question must be decided with reference to the scheme of the Bombay Home Guards Act, 1947, and the several provisions thereof. After considering the scheme and the provisions of the said Act, I have already come to the conclusion that it is difficult to hold that a member of the Home Guards organization is a State Government servant. In my view, therefore, the decision relied upon by Mr. Sanghavi is of no avail to him”.*

13. According to the learned counsel for the applicants, the applicants are not claiming regularization of services or grant of

regular appointment as has been denied to the Gram Rashak Home Guards Welfare Association in Civil Appeal no.2759/2015 arising out of SLP (c) 12858 of 2009. However in the said Judgment also the Hon'ble Apex Court has observed as under :-

*“(22) In view of the discussion made above, no relief can be granted to the appellants either regularization of service or grant of regular appointments hence no interference is called for against the Judgments 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 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.”*

14. I have carefully gone through the Judgment on which the learned counsel for the applicant has placed reliance. It is material to note that in the State of Maharashtra there is a specific Act and the rules are also framed under Mumbai Home Guard Rules, 1947. From time to time the remunerations of Home Guards are being enhanced and therefore there is no question of giving any directions to the Government in this regard.

15. As already observed by the Hon'ble Apex Court after considering the scheme and provisions of the Bombay Home Act,1947, it is difficult to hold that the members of Home Guard

Organization is the State Government servant and the organization is meant to be voluntary and it consisted of people from all walks of life. The voluntary nature is a basic feature of the Home Guards and there is nothing to show or even to suggest that master servant relationship between the members of the association and the Government. The services being voluntary, the applicants will not get any pay, but duty allowances as may be fixed by the State Government from time to time. Since the members of the Association have voluntarily accepted to serve, they cannot insist the Government to pay particular amount as remuneration for their work.

16. On a conspectus of discussion in foregoing paras, I am therefore satisfied that there is no relationship of master servant between the members of the Association and the respondents and since the organization being voluntary in nature, they cannot claim for regularization of their services, parity in pay etc. Hence, the following order :

**ORDER**

The O.A. stands dismissed with no order as to costs.

**(J.D. Kulkarni)**  
**Vice-Chairman (J).**