

## **KARNATAKA HOME GUARDS ACT, 1962**

**35 of 1962**

[ ]

### CONTENTS

1. Short title and extent
2. Definitions
3. Constitution of Home Guards and appointment of Commandant General and Commandants
4. Appointment of Members
5. Functions and duties of members
- 5A. Obligation of Employer to Permit Home Guards to Join Duty
6. Powers, protection and control
7. Control by officers of police force
8. Certificate, arms, etc., to be delivered up by person ceasing to be a member
9. Punishment of members for neglect of duty, etc
10. Punishment
11. Disciplinary action against Commandant or the Commandant General
12. Powers of State Government to make rules
13. Members of the Home Guards to be public servants
14. Members of the Home Guards not disqualified from being members of local authorities
15. Amendment of Karnataka Act 4 of 1957
16. Repeal of certain Acts and savings
17. Repeal of Karnataka Ordinance No. 4 of 1962

## **KARNATAKA HOME GUARDS ACT, 1962**

**35 of 1962**

[ ]

STATEMENT OF OBJECTS AND REASONS [KARNATAKA ACT No. 35 OF 1962] Karnataka Gazette, Extraordinary, dated 1-12-1962 At present the Home Guards Organisation is in existence only in the Bombay-Karnataka Districts of the State. In view of the present emergency it is considered necessary to have a voluntary body of persons throughout the State to discharge duties in relation to the protection of persons, the security of property and preservation of

public order in emergency. Hence, it is proposed to organise Home Guards in the entire State. In order to effectively control and administer the Organisation it is necessary to have a uniform law. In view of the urgency and as the Legislature was not in session, the Mysore Home Guards Ordinance, 1962, was issued. The present Bill is intended to replace the said ordinance. Except for the two clauses relating to repeal and savings, and the addition of a provision for laying rules made under the Act before the Houses of Legislature, in other respects the provisions of the Bill are identical with the provisions of the Ordinance.

### **1. Short title and extent :-**

(1) This Act may be called the Karnataka Home Guards Act, 1962.

### **2. Definitions :-**

In this Act, unless the context otherwise requires.

(a) "Home Guard" means a person who is appointed as a Home Guard under this Act;

(b) "Prescribed" means prescribed by rules made under this Act.

### **3. Constitution of Home Guards and appointment of Commandant General and Commandants :-**

(1) The State Government shall constitute 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 and the preservation of public order or tranquility, as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.

(2) The State Government may appoint as many Commandants as it may consider necessary for the proper governance and conduct of the Home Guards and shall specify the areas over which each such Commandant shall have jurisdiction.

(3) The State Government shall appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of all the Home Guards in the State.

### **4. Appointment of Members :-**

(1) Subject to the approval of the Commandant General, the Commandants may appoint as members of the Home Guards such number of persons, who are fit and willing to serve, as may from

time to time be determined by the State Government, and may appoint any such member to any office of command in the Home Guards.

(2) Notwithstanding anything contained in sub-section (1), the Commandant General may appoint a member of the Home Guards to any post under his control.

(3) Every member of the Home Guards shall on appointment receive a certificate of appointment which shall be in such form and shall be issued by such authority as may be prescribed, and thereupon he shall have the powers, privileges and protection conferred, and discharge the duties imposed, on a Home Guard by or under this Act.

## **5. Functions and duties of members :-**

(1) The Commandant General may at any time call out any member of the Home Guards for training, or to discharge any of the functions or duties assigned to the Home Guards in any part of the State in accordance with the provisions of this Act and the rules made thereunder.

(2) 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 him by or under this Act.

(3) The Deputy Commissioner or the Superintendent of Police of a District may at any time call out a member of the Home Guards to discharge any of the functions or duties assigned to him by or under this Act.

## **5A. Obligation of Employer to Permit Home Guards to Join Duty :-**

<sup>1</sup> (1) Subject to such rules as may be prescribed, every employer shall permit a Home Guard, who is for the time being employed by or under him, to join, his duty as such, and notwithstanding anything contained in any law or agreement between him and such Home Guard, the employer shall be liable to pay to such Home Guard, for the period of his duty as such Home Guard, not exceeding sixty days in a year, the pay and allowances, as if such Home Guard had not been called out to join his such duty.

Explanation. For the purpose of this sub-section duty includes any training as such Home Guard.

(2) No employer shall dismiss, remove or suspend any employee or take any other action which may prejudice such employee only by reason of his being a member of the Home Guards.

(3) Whoever contravenes the provisions of sub-section (1) or (2) shall be punished with fine which may extend to one thousand rupees.

(4) Nothing in this section shall apply to an employer unless he had been informed by the employee of his being, or by the concerned Commandant of such employee being, a Home Guard at the time of applying for employment under such employer or at the time of enrolment as a member of the Home Guards while being such employee.

1. Section 5-A inserted by Act No. 11 of 1977.

#### **6. Powers, protection and control :-**

(1) A member of the Home Guards when called out under Section 5 shall have the same powers, privileges and protection as an officer of police appointed under the <sup>1</sup> [Karnataka Police Act, 1963.]

(2) No prosecution shall be instituted against a member of the Home Guards in respect of anything done or purporting to be done in the exercise of his powers or the discharge of his functions or duties as such member, except with the previous sanction of the Commandant General.

1. Substituted for the words and figures "Mysore Police Act, 1908, the Madras District

#### **7. Control by officers of police force :-**

The members of the Home Guards when called out under Section 5 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.

#### **8. Certificate, arms, etc., to be delivered up by person ceasing to be a member :-**

(1) Every person, who, for any reason to be a member of the Home Guards or resigns his membership, shall forthwith 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, clothings and other articles which have been issued 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 Deputy Superintendent of Police or Assistant Superintendent of Police, may issue a warrant to search for and seize wherever they may be found any certificate, arms, accoutrements, clothing or other necessities 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 or 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 issued.

#### **9. Punishment of members for neglect of duty, etc :-**

(1) The Commandant shall have the powers to suspend, reduce or dismiss, or to impose fine not exceeding a sum of fifty rupees on any member of the Home Guards under his control, if such member neglects or refuses to discharge his functions and duties as a member of the Home Guards or to obey any lawful Police Act, 1859, the Police Act, 1861, the Hyderabad District Police Act, 1329 Fasli, or the Bombay Police Act, 1951, as the case may be" by ALO 1973. order or direction given to him for the due performance of his functions and duties or is guilty of any breach of discipline or misconduct.

(2) The Commandant General may in respect of any member of the Home Guards appointed to a post under his control impose any penalty specified in sub-section (1), and may also dismiss any member of the Home Guards on the ground of conduct which has led to his conviction on a criminal charge.

(3) Notwithstanding anything contained in this Act, the Commandant General or the Commandant may 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 General or the Commandant, as the case may be, the services of such member are no longer required.

(4) When the Commandant General or the Commandant passes an order suspending, reducing, dismissing or fining any member of the Home Guards under sub-section (1) or sub-section (2) he shall record such order together with the reasons therefor, and no such

order shall be passed by the Commandant General or the Commandant unless the person concerned is given a reasonable opportunity to be heard.

(5)

(a) Any member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant General, and any member of the Home Guards aggrieved by an order of the Commandant General may appeal against such order to the State Government.

(b) An appeal under clause (a) shall be filed within thirty days from the date on which the order is communicated to the member of the Home Guards.

(6) The Commandant General or the State Government, may either suo motu or on application call for and examine the record of any order passed by any officer subordinate to him or it under this Act for the purpose of satisfying himself or itself as to the legality or propriety of such order and may pass such order with reference thereto as he or it may think fit.

(7) Any penalty on a member of the Home Guards under this section shall be in addition to any punishment to which such member is liable under Section 10 or any other law for the time being in force.

#### **10. Punishment :-**

(1) If any member of the Home Guards on being called out under Section 5, 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 punished 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.

(2) If any member of the Home Guards wilfully neglects or refuses to deliver up his certificate of appointment or of office or any other article in accordance with the provisions of sub-section (1) of Section 8, 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.

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

(4) A police officer may arrest without warrant any person who commits an offence punishable under this section.

**11. Disciplinary action against Commandant or the Commandant General :-**

The State Government may at any time, subject to such rules as may be prescribed, dismiss, remove, suspend or reduce to a lower post or rank, any Commandant or the Commandant General, whom it considers to be remiss or negligent in the discharge of his duty or otherwise unfit for the same and may order the recovery from the pay or allowances of any such officer of the whole or any part of any pecuniary loss caused to the State Government by his negligence or breach of orders.

**12. Powers of State Government to make rules :-**

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for or regulate the following matters, namely.

(a) the exercise by any officer of the Home Guards of the powers conferred by Section 5 on the Commandant and the Commandant General;

(b) the exercise of control by officers of the police force over members of the Home Guards when acting in aid of the police force;

(c) the organisation, appointment, conditions of service, functions, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service;

(d) the exercise by members of the Home Guards of any of the powers exercisable under Section 6;

(e) the procedure to be followed in taking disciplinary action against the Commandants or the Commandant General;

(f) generally for giving effect to the provisions of this Act.

(3) Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything done under that rule.

**13. Members of the Home Guards to be public servants :-**

The members of the Home Guards acting under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

**14. Members of the Home Guards not disqualified from being members of local authorities :-**

Notwithstanding anything contained to the contrary in any other law for the time being in force, a member of the Home Guards shall not be disqualified for being chosen as and for being a member of any local authority merely by reason of the fact that he is a member of the Home Guards or that he holds an office of profit under the Government by virtue of his being a member of the Home Guards.

**15. Amendment of Karnataka Act 4 of 1957 :-**

In Section 3 of the Karnataka Legislature (Prevention of Disqualification) Act, 1956, after clause (b), the following clause shall be inserted, namely.

"(bb) the office of a member of the Home Guards constituted under the Karnataka Home Guards Act, 1962".

**16. Repeal of certain Acts and savings :-**

The Bombay Home Guards Act, 1947 (Bombay Act III of 1947), the Karnataka Home Guards Act, 1941 (Karnataka Act XIV of 1941), the Madras Home Guards Act, 1948 (Madras Act I of 1948) and the Coorg Home Guards Act, 1950 (Coorg Act I of 1950) are hereby repealed:

Provided that Section 6 of the Mysore General Clauses Act, 1899 (Mysore Act III of 1899) shall be applicable in respect of such repeal and Sections 8 and 24 of the said enactment shall be



applicable as if the said Acts had been repealed and re-enacted by this Act:

Provided further that the members of the Home Guards constituted under any of the repealed Acts immediately before the coming into force of this Act, shall be deemed to be the members of the Home Guards constituted under this Act.

**17. Repeal of Karnataka Ordinance No. 4 of 1962 :-**

(1) The Karnataka Home Guards Ordinance, 1962 is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken (including any notification issued or order, rule or appointment made under the said Ordinance shall be deemed to have been done or taken, in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken.