

(2004) 11 AHC CK 0226

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 45709 of 2004

Suraj Prasad Tewari

APPELLANT

Vs

Zila Commandant, Home Guards
and Others

RESPONDENT

Date of Decision: Nov. 5, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21, 311
- Uttar Pradesh Home Guards Act, 1963 - Section 10

Citation: (2005) 5 AWC 4145 : (2005) 1 UPLBEC 404

Hon'ble Judges: Shishir Kumar, J

Bench: Single Bench

Advocate: R.R. Shivahare, for the Appellant;

Final Decision: Dismissed

Judgement

Shishir Kumar, J.

The petitioner is aggrieved by the order dated 15.10.2004, Annexure-1 to the writ petition by which his assignment as a Company Commander has been cancelled by the Divisional Commandant, Home Guards, Jhansi. The petitioner contends that the aforesaid order is violative of Articles 14 : 16 : 21 and 311 of the Constitution of India and before passing the aforesaid order no opportunity of hearing or show cause has been given to the petitioner. The petitioner has placed reliance on a Single Judge judgment of this Court in the case of Suraj Tiwari v. Zila Commissioner, Home Guards, Hamirpur and Ors., reported in 1998 (3) AWC 1623. It has been stated that while deciding the aforesaid case, the Hon"ble Single Judge has adopted the reasoning of the earlier judgment delivered in the case of Vibhuti Narain Singh v. State and Ors., reported in 1986 UPLBEC 1130. Various other grounds have been raised on behalf of the petitioner that though the petitioner was being paid honorarium, yet he was entitled for show cause notice and opportunity of hearing and as such in the absence of it, the order passed by the respondent is illegal and is

liable to be quashed.

2. The learned Standing Counsel has placed reliance on the explanation of Section 10 of U.P. Home Guards Act, 1963 and 2003(4) Educational and Services Cases 1964, in which the Division Bench of this Court while considering the similar question regarding explanation of Section 10 has held that a Home Guard shall not be deemed to be a "holder of a civil post merely by reason of his enrollment as Home Guard". The Division Bench of this Court has also considered the earlier judgment cited by the petitioner and has come to the conclusion that as he is not holding a civil post, therefore, he does not come in the definition as provided. It has also considered that Article 311 of the Constitution while deciding the controversy whether in spite of the fact the consideration of Section 10, the explanation that clearly stated that the home guard shall not be deemed to be a holder of civil post. The Division Bench has also considered the judgment of Writ Petition No. 29824 of 1992 and held that in the said judgment, the aforesaid point was not for adjudication.

3. I have heard the learned Counsel for the petitioner and the learned Standing Counsel and after hearing both the parties. I am of opinion that the controversy involved in the present writ petition is fully covered by the judgment of the Division Bench of this Court delivered in Writ Petition No. 23570 of 1987, Riasat Ali v. State of U.P. and Ors.

4. In view of the aforesaid facts the petition is dismissed. There shall be no order as to costs.