

(2012) 09 CAL CK 0054

Calcutta High Court (Port Blair Bench)

Case No: Writ Petition No. 225 of 2012

Shri Mohammed
Yousuf and Others

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Sept. 24, 2012

Acts Referred:

- Constitution of India, 1950 - Article 240

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Advocate: Mohd. Tabraiz, for the Appellant; Santosh Kumar Mandal and Mr. Satish Chandra Mishra, for the Respondent

Final Decision: Dismissed

Judgement

Harish Tandon, J.

The writ petitioners were appointed as Home Guards in A & N Islands Home Guard Organization on diverse dates and have jointly filed the instant writ petition challenging the notification dated 11.10.2011 issued by the Assistant Secretary (Home), A & N Administration, Port Blair, wherein the eligibility criteria are that the Home Guard Volunteers of the said Organization must render five years of continuous service without any break and should be in active service as on 06.5.2009. It is pertinent to be recorded before proceeding to deal with the matter that none of the petitioners are in active service at the time of moving the instant writ petition. A & N Islands Home Guards Regulation, 1964 was promulgated in exercise of the power conferred by Clause-I of Article 240 of the Constitution of India. The object behind the promulgation of the said Regulation is to provide the protection of person, security of property and for the larger interest of public safety. Regulation 5 thereof provides the tenure for such service as may be prescribed.

2. In exercise of the power conferred by Section 16 of the A & N Islands Home Guards Regulation, 1964, the A & N Islands Home Guards Rules, 1965 was framed. The eligibility criteria enshrined in Rule 3 thereof are that the candidate must attain the age of 18 years but has not completed the age of 50 years and should have at least passed the IVth standard examination. Rule 8 of the said Rules postulates the term of office of the member of the Home Guards to be three years and are eligible for re-appointment under the second proviso thereof.

3. Although the term of office under the said Rules is three years, but the Administration allowed certain persons to continue to render their services for more than one decade or so.

4. Two Tribunal applications were taken out by two groups of such Home Guard Volunteers, who rendered the service for more than a decade, before the Central Administrative Tribunal being O.A. No. 122/AN/99 and O.A. No. 28/AN/2002. The bone of contention in the aforesaid Tribunal applications was two-fold. Firstly, they should be provided pay parity on the principle of equal pay for equal work and secondly because of their long services their appointment should be regularized. The Tribunal disposed of both the applications by passing a common order dated 16.9.2002 by directing the respondent No. 1 to frame a scheme regarding the regularization/absorption/appointment of the person like the applicants therein in consultation with the A & N Islands" Administration. The said order was assailed by filing Writ Petitions before this Court being WPCT No. 73 of 2003 and WPCT No. 158 of 2003. The Division Bench disposed of both the Writ Petitions on 16.12.2003 by treating the same as original writ petitions after making a finding that the Home Guards are not engaged in service to a civil post under the Union. Ultimately, the Division Bench declined to interfere with the ultimate decision of the Tribunal. The SLP filed against the said order was dismissed summarily.

5. In compliance of the aforesaid order, the Home Guards (Regularization/Absorption/Appointment) Scheme of A & N Administration, 2005 was framed and duly notified on 5th April, 2005. By the said notification, the A & N Administration decided to fill up 20% of the vacancies occurring in any year (including the existing vacancies) in all the posts in Group-D under A & N Administration and in the post of Constable in Group-C under the A & N Police Department for the Home Guards who are presently enrolled and have rendered at least five years of continuous service or more.

6. Challenging the aforesaid Scheme a writ petition was taken out being W.P. No. 195 of 2005 before this Court. The main thrust of challenge in the said writ petition was that the Administration cannot regularize the services of the Home Guard Volunteers in phase wise manner but should have been done at a time. The petitioners relied upon the judgment of the Apex Court delivered in case of [State of West Bengal and Others Vs. Pantha Chatterjee and Others](#), where the regularization in phase wise manner was turned down. However, the writ petition was dismissed by the Hon"ble Single Bench and

the said order was assailed by filing an intra court appeal being MAT No. 25 of 2006. The Division Bench ultimately found that the said scheme was not framed in conformity with the direction of the earlier Division Bench and ultimately quashed and set aside the same. While quashing and setting aside the said scheme, the Division Bench expressly observed that the eligibility criteria enshrined therein are not unreasonable and ultimately directed the Administration to find out the ways and means for absorption/regularization of the eligible persons and/or similarly placed persons in terms of the order of the Division Bench, if necessary, by creating a supernumerary post so that 100% absorption/regularization can be made at one time. The SLP though initially admitted was ultimately disposed of by maintaining the judgment of the Division Bench of this Court.

7. The Administration instead of framing a Scheme created 326 posts in the lowest Group-D grade and published the list of the volunteers whose services were regularized. The order No. 298 dated 8th December, 2009 by which 325 volunteers have been absorbed in the supernumerary posts was further challenged by seven different groups by filing the seven separate writ petitions before this Court. All the aforesaid writ petitions were heard analogously and by a common judgment dated September 20, 2010, all the writ petitions were dismissed. Three several appeals were filed before the Division Bench being MAT 64 of 2010, MAT 65 of 2010 and MAT 66 of 2010. All the Mandamus appeals were allowed by a common judgment dated 04th February, 2011 and it is specifically held that the said order No. 298 dated 8th December, 2009 is passed without framing any scheme and therefore was quashed and set aside.

8. Subsequently, the Administration framed regularization of Home Guards Scheme of A & N Administration-2011 which was published in official gazette on 11th October, 2011. This time the challenges made to the said scheme in this writ petition are on the ground that the eligibility criteria of minimum five years of continuous service without any break are arbitrary and the word "continuous" is purposely made to eliminate large number of home guards volunteers who although have rendered more than five years of service but not continuously.

9. Mr. Tabraiz, learned advocate appearing for the petitioner vehemently submits that in an earlier scheme the same eligibility criteria were made and the Division Bench quashed and set aside the said scheme being not in conformity with the direction of the Division Bench of this Court. He further submits that the authorities cannot put the same condition in the fresh scheme which has been turned down by this Court on an earlier occasion. Lastly, he submits that the word "continuous" should be deleted and/or expunged from the said notification so that an equal opportunity would be given to all the home guard volunteers who have rendered five years of service.

10. Mr. Mandal, learned advocate appearing for the respondents countered the submission of the petitioner in contending that the earlier scheme was set aside on the basis of the ratio laid down in Pantha Chatterjee's case (supra) as the phase wise regularization is not permissible. He succinctly submits that the Division Bench after

having found the said scheme to be contrary to the order of the Division Bench had held that the eligibility criteria are not unreasonable. Therefore, the petitioner cannot seek for a mandamus directing the authorities to delete the word "continuous" from the eligibility conditions. Lastly, he submits that the aforesaid scheme was framed to regularize the appointments of the home guard volunteers who because of the wrong decision of the Administration have been allowed to render service beyond the prescribed term and therefore the petitioners who do not come within the purview of the said scheme are not entitled to challenge the same in the instant writ petition.

11. Having heard the respective submissions, the facts enumerated herein above are more or less admitted by the parties. The scheme has originated from an order of the Division Bench of this Court in WPCT 73 of 2003 and WPCT 158 of 2003. Although the A & N Islands Home Guard Rules, 1965 provides the tenure of three years for such voluntary services with the further entitlement of re-appointment but the Administration in gross violation of the said provision allowed certain volunteers to continue to render services beyond the said prescribed term. Those candidates approached the Court by making two fold prayers i.e. pay parity on equal pay for equal work and regularization of their appointments. The scheme framed on an earlier occasion provides for phase wise regularization, which was found by the Division Bench in MAT 25 of 2006 to be contrary to the ratio laid down in Pantha Chatterjee's case (supra). But, at the same time, the Division Bench held that the eligibility criteria cannot be termed to be unreasonable. The Division Bench ultimately directed the official respondents to regularize the appointments of all the home guard volunteers as one time measure, if necessary, by creating supernumerary posts. The Supreme Court also expressed that the regularization should have been done in one go and not in phases, of all the candidates who are otherwise eligible

12. The intent and purport of the Division Bench is manifest as it found that the eligibility criteria are not unreasonable. It was all along intended to frame the scheme to regularize the appointments of those home guard volunteers who have rendered more than a decade by the Administration. The rules provide the term of the service to be three years and the said volunteers can be re-appointed. It was never intended by the Division Bench or by the Supreme Court to frame the scheme to operate indefinitely. The said scheme was directed to be framed for regularization of the candidates who because of the decision of the Administration had been allowed to render services beyond the prescribed period. Although the earlier scheme was quashed and set aside but the eligibility criteria were declared to be reasonable and rational by the Division Bench. The petitioners who are no longer rendering voluntary services as home guards and were also parties to the seven several writ petitions initiated earlier cannot come forward and challenge that the eligibility criteria of rendition of five years of continuous service are arbitrary and contrary to the direction of the Division Bench.

13. Thus, I do not find any merit in the contention of the petitioner warranting interference by invoking the powers of judicial review.

14. The writ petition is, therefore, dismissed. There shall, however, be no order as to costs.