Kankar Karmakar Vs State of West Bengal

Court: Calcutta High Court

Date of Decision: May 21, 1999

Acts Referred: Constitution of India, 1950 â€" Article 226
West Bengal Home Guards Act, 1962 â€" Section 3, 6
West Bengal Home Guards Rules, 1962 â€" Rule 4

Citation: (1999) 1 ILR (Cal) 494

Hon'ble Judges: D.P. Sircar-I, J

Bench: Single Bench

Advocate: R.G. Ram, for the Appellant;Tapan Ch. Dutta, for the Respondent

Final Decision: Allowed

Judgement

D.P. Sarcar-I, J.
In this writ application under Article 226 of the Constitution of India the Petitioners have challenged the West Bengal

Home Guards Act, 1962 and the rules framed thereunder, including the amendments thereto, alleging violation of the provisions contained in the

Articles 14, 16, 19 and 43 of the Constitution by the Respondents, including State of West Bengal. The Petitioners have also prayed for

cancellation of the notification bearing No. 5220-HCD/HG-37/95 for striking off the names of the members of the Home Guards from the muster

roll as soon as the members of the Home Guards would reach the age of sixty years, without payment of any retirement benefit.

2. The Petitioners claim that they were appointed since the coming in force of the West Bengal Home Guards Act, 1962 and are working till today

and perform their duties as prescribed under the said Act and Rules, although in between the dates they were shown to have been dropped out

from work from time to time. The Government of West Bengal has a regular department about the Home Guards as constituted under the direction

of the Central Government, the Respondent No. 5. The Home Guards are appointed to assist the police in performing their duties as provided in

the Acts and Rules. They do the same work as the policemen do. The department is functioning regularly. The Respondent No. 5 pays 75% of the

wages of the Home Guards and the remaining portion of the fund required for payment to the Home Guards is shouldered by the State

Government. The Government of West Bengal does have a standing body of Home Guards throughout the year. The appointments, functions,

power, protection and control of the members of the Home Guards are governed by the provisions contained in the West Bengal Home Guards

Act, 1962 and the rules, subject to the amendments thereto from time to time. The Home Guards are sent for training by the appropriate authority,

just like the members of the West Bengal Police and are called upon for duties as assigned by the appropriate Police Authority to assist the

policemen in their duties in all respect. Each of the Home Guards gets a certificate about appointment in which the Appointing Authority as

provided u/s 6 of the said Act provides that a Home Guard when called upon to duty u/s 5 shall have the same power, privilege and protection as

policeman. Therefore, the work of the Home Guards in the State of West Bengal is similar to the duty of the police. They also maintain internal

security and law and order in the State and are also put to all other services just like the policemen in various walks of duties of the police

personnel In fact, about performance of the duties there is no difference between the police personnel and the members of the Home Guards.

3. But about the remuneration they claim, there is gulf of difference between the police personnel and the Home Guards. While the police

personnel get salaries in fixed scales prescribed for them and in addition get allowances, house rent, medical benefit uniform ration facilities,

privileged leave medical leave, casual leave and all retirement benefits like, pension, provident fund, family pension, dependents'' pension etc. the

members of the Home Guards do not get any of those privileges and facilities. They render service for paltry payment at a daily rate and get no

benefit at all at the time of the retirement. This wide discrimination about entitlements in the two services has been made purposively, knowingly

and intentionally, just for the purpose of exploiting the Home Guards. They get only the daily wages as their remuneration, revised from time to

time. Then again, payment of the daily wages is made to the Home Guards only for the actual working days toil. They do not get any leave. When

they are shown to have been dropped they do not get anything at all following the system as no-work-no pay. No benefit is given to them at all at

the time of termination of their service at their old age as terminal benefit. When they reach the age of sixty their names are just struck out. The

Home Guards also have to undergo training like policemen and are deputed to the same job as the policemen, rendering service for years,

although, with occasional breaks, made purposefully, just designed with a view to deny them of any benefit. They only get daily wages at the rate

fixed by the Government from time to time and only for the days they actually work. It has been provided in the Acts and Rules motivatedly that

the Home Guards are employed as just volunteers. But patently they are not at all volunteers. Although the Petitioners, like many other Home

Guards personnel are working since the West Bengal Home Guards Act, 1962 came into effect and are continuing as such even now, with

designed nominal artificial breaks inflicted occasionally they are denied of continuity of service, but are engaged again. The establishment of the

Home Guards is a regular establishment and the Home Guards are, infact, Government employees and not self-employed volunteers. A

discriminatory treatment is meted out to the Home Guards violating the Articles of the Constitution as aforesaid. When they fail sick no payment is

made to them, unlike police personnel, with whom they render equal service.

4. The Petitioners claim that they are subjected to sheer exploitation by the Respondents although this sort of exploitation is prohibited by the

Articles of the Constitution of India which guarantee equal benefit for equal work. The members of the Home Guards are compelled by coercion

to fill in a Form undertaking that they would work for a period of five years and not more than that, although, in fact, they render service for many

more years with occasional designed artificial breaks, which fact reveals the falsehood of the undertaking. This is clearly an arbitrary, unilateral,

motivated and mala fide exploritory action. By a G.O. No. 5520-HCD/HG-37/95 dated September 26, 1995 the Government has made a

necessary amendment in the West Bengal Home Guards Rules, 1962 making the enrolment of the Home Guards as those of the "volunteers", and

providing hat their names should be struck off while they would attain the age of sixty. This is gross illegal and discriminatory order of the

Government and is ultra vires offending the provisions of the Constitution of India.

5. The Petitioners pray for necessary provisions for equal entitlements with policemen in conformity with the Articles of Constitution of India on the

principle of equal-work-equal-pay. They also pray service benefits for the Petitioners and other members of the Home Guards in the same line as

that of the police personnel, for arrear of the dues of the Petitioners from the date of the joining of the service till the date of the order, injunction

upon the Governments in respect of obtaining Forms from the Home Guards employed that they would remain in service for five years and also

against striking out the names of the Home Guards from the muster roll on their attaining the age of sixty years without payment of any retirement

benefit.

6. The Respondents are represented by the learned advocate Mr. Datta, but none of them has filed any affidavit-in-opposition challenging the

averments in the writ petition on the points of facts.

7. The learned advocate for the Petitioners argues that the Home Guards are appointed to assist the policemen in all the affairs of the police

administration to the extent of the service rendered by the police personnel at the lowest level. But the service condition of the Home Guards are

quite miserable as may be found from the averments in the petition in this case. All these have not been controverted by the State by filing any

affidavit-in-opposition. He refers to the provisions of West Bengal Home Guards Act, 1962 and submits that Section 3 of the Act provides that

the body called Home Guard is to be constituted by none other than the Superintendent of Police and the members of Home Guard are to

discharge such functions in relation to (i) protection of persons, (ii) the security of property or (iii) public safety as may be assigned to them in

accordance with the provisions of the Act and Rules thereunder. This, he argues, is similar to the service rendered by the policemen. The

establishment of the Home Guards constituted u/s 3 of the West Bengal Home Guards Act, 1962 is a regular establishment and a permanent body,

similar to the police force of the land and parallel to it and is not a seasonal or occasional collection of men for any temporary need or humanitarian

cause. u/s 5 of the Act the Home Guards are called out in a District by none other than the Superintendent of Police of that district to discharge the

functions as assigned to them by the said provisions of the Act. u/s 7 when called out by the S.P. in that way directly in aid of the Police Force they

are to work under the control of the officer of such police in such manner and to such extent as may be prescribed by the rules made u/s 9 of the

Act. Section 9 the Act provides that the State Government may make rules consistent with the Act providing for exercise of control by the officers

of the police force over members of the Home Guards when acting directly in aid of the Police Force. The Home Guards, after appointment, are

subjected to training as provided in Section 5 of the Act and the Rules. He submits that all these show that the Home Guards render service equal

in all respect to the members of the policemen and are engaged in all sorts of duties as are discharged by the policemen, and, the Home Guards

always act in aid of the police force, virtually as a second fiddle of the police force. As they render service equal to the Policemen they are entitled

to equal payment and equal service benefits as per law which are being denied to them by worst discrimination. The learned advocate for the

Petitioners refers to the rulings reported in Dhirendra Chamoli and Another Vs. State of U.P., and Surinder Singh and Another Vs. Engineer-in-

chief, C.P.W.D. and Others,

8. Although the Respondents do not file any affidavit-in-opposition challenging the contention of the Petitioners, the Respondents appear through

the learned advocate Mr. Dutta, who argues on behalf of the Respondents and submits that the Home Guards can never be equated with the

Policemen. He argues that the Court has no jurisdiction to direct the Government to frame any rule to constitute any service and the Court cannot

direct a legislature to frame any law, and, as such, whatever the Court may pronounce in this case shall never be complied with. Shri Dutta argues

that the Home Guards are recruited under the West Bengal Home Guards Act, 1962, as amended from time to time, and the incidents of the

appointment and conditions of their working are regulated by the provisions of this Act as amended from time to time and the Rules framed there

under, which, Shri Dutta argues, nowhere provides for equal power and equal volume of duty of the policemen of the lowest rung and the

members of the body of Home Guards. He argues that the policemen are appointed by the State Government. But u/s 3 of the Act the Home

Guards are appointed by the Superintendent of the Commissioner of Police for the District on Calcutta as it may be, and the Government has

nothing to do about their appointment. He argues that under these circumstances the Government cannot be called upon to formulate any rule or

make any payment to the Home Guards equivalent to those of the policemen even of the lowest rung. The duties and everything regulating the

service of the policemen and those about the body of Home Guards are quite different. The Home Guards are, in fact, the volunteers. He draws

the attention of the Court to the sections of the Act in which it has been stated that the Superintendent of Police or the Commissioner of Police may

appoint so many persons as Home Guards who are fit and willing to serve as such, (under scoring supplied). By the term "willing to serve" Shri

Dutta means that those who are volunteers and as such the Home Guards do not form any regular service under the Government. He argues that

while a policeman render service for 24 hours the Home Guards render service for only fixed eight hours of the day, and thus get payment at daily

rate, calculating working days. He draws attention of the Court to the amendment of the Principal Act by West Bengal Home Guards Amendment

Act, 1990 wherein it has been provided, by amendment of Section 6 of the Principal Act, that the work "member" wherever used in Section 6 of

the Act shall be substituted by the work "volunteer". By this amendment the work "member" has been delated from everywhere in the Original Act

of 1962 and the work "volunteer" has been subtituted therefor. As such a Home Guard, he argues, is nothing but a volunteer, and is not an

employee. He further draws the attention of the Court to the amendment to Section 9 of the Principal Act by which the word in Sub-section (2)

Clause (b) for the word ''appointment'' the word ''enrolment'' has been substituted. Home Guards are not, therefore, he argues, appointed in any

service, far less in any regular service. Some volunteers are just enrolled as Home Guards. In Rule 4 of the said rules, he argues, it has been

provided that save as the State Government may otherwise direct service of the Home Guards shall ordinarily be voluntary and unpaid. This rule

has a proviso in the term that the State Government may determine the allowance for expenses-to be paid to the members of the Home Guards

when called out on duty. Thus what the Home Guards get are not their salary, but just allowance for expenses when called out on duty. The Rules

of 1962 were similarly amended by the G.O. No. 1159 H.C.D. dated February 1, 1991, by which the word ''member'' used was everywhere

subsituted by the work ''volunteer''. Learned advocate Mr. Dutta argues that the Home Guards are recruited for occasional enrolment, and not

against anysubstantive vacancy. No part of their duty can be called to be equal to those of the policemen. Mr. Dutta refers to the ruling reported in

Delhi Development Horticulture Employees'' Union Vs. Delhi Administration, Delhi and others, in which it has been held that men appointed under

temporary Government Scheme have no right to claim regularisation because of completion of 240 days or more days of work, and he draws the

attention of the Court to the observation of the Supreme Court that indiscrimination regularisation jeopardises public interest. He also relies upon

an unreported ruling of this Court in State of West Bengal v. Pradip Dutta Appeal No. 583 of 1991 about very same subject, the Home Guards, in

which the Division Bench held that it could not direct to allot duty and/or for regularisation of the service of the volunteer force and that the concept

of regularisation would only arise in case of persons who were continuously serving, not voluntarily, but as temporary workers and when there was

permanent posts available. He also cites an unreported ruling of the Hon''ble Supreme Court in Ram Monohar Das Sharma v. State of Punjab I.A.

No. 2 in SLP (Civil) No. 12465 of 1990 dt. July 30, 1991 in which the Supreme Court held that the Home Guards employed on temporary needs

from time to time cannot ask for regularisation.

9. Having considered the gamut of the case of Petitioners and the arguments of both the learned advocates as well as the documents filed by the

Petitioners I get that the contention involved in this case is that the Petitioners work as Home Guards and the Body was constituted in terms of the

Act of 1962. The Petitioners claim that they do the same job as the policemen in maintaining law and order and public safety. They claim that

although they are called to be ''volunteers''. The expression is fraudulent and camouflaged to felicitate exploitation and the documents filed by them

reveal that, they are not volunteers; they are in regular and continuous service as other Government Employees and some of them are rendering

service as Home Guards since after the Act came into operation. They are given ''Appointment Certificate'' showing the date of the appointment of

each of them and the functions they are to discharge. All of these Petitioners were called out by no other authority that the Superintendent of Police

of Hooghly District in terms of the provisions of the Act, some twenty years or so before the petition and undisputedly since then they are working

as Home Guards in different places of the districts continuously, although at times with routine camouflaged artificial breaks which the Petitioners

maintain were done with a view to defraud them. The Petitioners'' categorical claim is that they render service in all respect equal to the policemen

of the lowest grade, that is, the constables; but they are not allowed to have the same benefit; as are allowed to the constables. They claim that,

therefore, the conduct of the Respondent violates the provisions of different Articles of the Constitution, viz. Articles 14, 16, 19, 23, 38, 41 and

43. They claim that it is a mere eye-wash that they are shown as ''volunteers'' or that their service shown to have been broken after lapse of certain

times at will by way of routine. But despite that those people are working regularly since they were recruited, i.e. more than twenty years. Some of

them are working continuously for considerable long time, punctuated by such occasional artificial breaks which are nothing but more eye-wash

and fraudulent act of the Respondents to camouflage the real state of incessant continuity and to perpetrate exploitation, even offending

constitutional guarantees. An undertaking is obtained during their appointments that they are to act only for five years; but despite that they as their

present incumbency prove, continue to render service for years after years but only as daily rated workers, irrespective of length of service put in

which reveal falsity of the undertaking. The routine breaks are devised to camouflage the reality of continuous service like policemen and is an

engime of fraud and oppression to the Home Guards. The principle of equal-work-equal-payment, the Petitioners claim, have thereby been

notoriously violated in their case and the act and outlook of the Respondents, as are meted out to these people, are of obvious exploitation. To

add fuel to the fire, the Respondents have issued a notification No. 5520-HCD/HG-37/H 95 dated September 26, 1995 by which it has been

provided that enrolment of the Home Guards shall be made from amongst the ''volunteers'' as are of the age of the 18 years or more, but not more

than 35 years on the date of enrolments and, the names of the enrolled Home Guards shall, on attaining the age of 60 years, be struck off the

Muster Roll. The Petitioners claim that there acts and conducts of the Respondents are flagrant exploitation, unlike that is done in case of the

policemen. The substance of the Petitioners'' case, therefore, is that although they render service equal to the policemen of the lowest grade in all

walks of the police administration, they are grossly exploited by depriving them of any of the benefits which are allowed to the policemen, and, this

acts of the Respondents are illegal and ultra vires. The act of the Government in amending the provisions of the Act and Rules relating to the Home

Guards making the term ''appointment'' all on a sudden as ''enrolment'' and members as ''volunteers'' are also ultra vires and the Petitioners cannot

be bound by that.

10. Although the Respondents contest the case, even in the face these categorical averments and claims of the Petitioners, the Respondents do not

file any affidavit-in-opposition, and, as such, no point of fact urged by the Petitioners in the writ petition has been controverted by the Respondents

by filing affidavit-in-opposition. The learned Government Pleader Shri Dutta, however, criticises the contention of the Petitioners as I have

discussed above. By relying on the rulings quited above he argues that the Home Guards can never be equated with the policemen and under no

circumstance the work done by the Home Guards can be equated with the service of the policemen even in the lowest grade and the question of

equal pay and benefit can never arise. He argues that the Home Guards, being just a band of volunteers, enrolled occasionally, can in no

circumstance claim equal status and service benefits as those given to the policemen. They do not have any regular service, scale of pay and the

concept of retirement and a Court cannot direct the executive or legislative to provide scale of pay and to frame law relating to the claimed

entitlements of the Petitioners. No cadre post having been sanctioned by the Government the Petitioners cannot claim the benefits as they are

claiming. The Home Guards, he argues, are not the Government Employees, and hence, cannot be equated with policemen. They are just

volunteers getting daily amount for the job done. Shri Dutta argues that the policemen are appointed by the Government against sanctioned

strength; but the Home Guards are not. I have gone through the rulings quoted by Mr. Dutta to support his argument.

11. There are, therefore, two separate groups of people; one constituting the police service and other the Home Guards. The foundation of the

Petitioners'' case is that they render service equal to the men in police force and are entitled to equal benefits with them. The first point, therefore, is

whether the Petitioners can be believed to be rendering the same service as done by the policemen, as it is the first premises of the claim of equal

pay and benefits equal to those of the policemen.

12. The Petitioners state some facts on affidavit, claiming that they do the same functiones and duties as are done by the police force. The

Respondents do not file any Affidavit-in-Opposition countering those statements of fact by the Petitioners, and hence those claims of the

Petitioners on questions of fact supported by affidavits have not been controverted by the Respondents. We may examine how far those claims are

supported by the provisions of law and judicial pronouncements.

13. In Section 2, Sub-section (3) of West Bengal Home Guards Act, 1962, it has been provided that Home Guards means a Home Guard

constituted u/s 3 of the Act. This term ''Home Guard'' has not been defined exhaustively anywhere except that it means the body of Home Guards

constituted u/s 3 of the Act. u/s 3 of the Act it has been provided that the Superintendent of Police in the District and the Commissioner of Police in

Calcutta may constitute respectively for their own territorial jurisdiction, a body called the Home Guards, the members of which shall discharge

such functions in relation to the protection of persons, the security of property of the safety as may be assigned to them in accordance with the

provisions of the Act and the Rules made thereunder. Thus we understand that the Home Guards are to discharge such functions in relation to the

''protection of the persons, the security of the property or the public safety as may be assigned to them in accordance with the provision of the Act

and the Rules made thereunder''. By a subsequent amendment of the Act in 1990 the term ''members'' has been substituted by the term

''volunteers''. Be that it may, the point for consideration at this stage is whether the Home Guards render service equal to those of the policemen,

obviously in the lowest grade. The provision of Section 3 as I have quoted above reveals that the Home Guards are engaged for discharging such

functions in relation to (i) the protection of the persons, (ii) the security of the property or (iii) the public safety as may be assigned to them. The

Superintendent of Police in the district concerned is empowered to constitute the body under the Act of 1962 and assign jobs to them, as provided

in Section 3 as scanned above, obviously which must be relating to police administration. Section 5 provides for training of the Home Guards and

their duty to discharge any function a. assigned to them by the Police Authority. Section 6(i) of the Act provides that a Home Guard when called

out u/s 5 shall have the same power, privileges and protection as an Officer of the Police appointed under any Act, and Section 7 provides that

when called out u/s 5 directly in aid of police force, the Home Guards shall be under the control of the officers of such force. In the rules framed

u/s 9 of the Act there are specification of duties which are more or less akin to the functions as described in Section 3 of the Act. Rule 5 provides

for their training under I.G. of Police. Rule 7 of the West Bengal Home Guards Rules 1962, provides that the duties of the Home Guards are-

(i) to assist the police force in the protection of civil population against the forces of crime and disorder,

(ii) to work in close touch with Civil Defence Organisation,

(iii) to perform such duties in connection with the protection of persons, the security of property or public safety as the State Govt. may from time

to time by rule assign to them.

14. The term "police" also has not been defined in any provision of law. No such provision of law has been shown to me in which one can find that

the term "police" has been defined. The policemen are known by their duties as have been laid down in Section 23 of Police Act, 1861 and

specifically under Chapter 6 of the P.R.B. which also are, maintain public peace, to prevent commission of offences, public nuisances, to collect

and communicate intelligence and apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground

exists. In Section 1 Interpretation Clause of the Police Act, 1861 it has been provided that the work "police" shall include all persons who shall be

enrolled under this Act. This defination also, therefore, is not at all exhaustive except by description of the duties and, as I stated above, police is a

body of persons enrolled as such and known by the works assigned to them as under aforesaid provisions of the Act, 1861. The preamble of the

Police Act shows that police was constituted for making it an "efficient instrument for prevention and detection of crime". In the Chambers

Twentieth Century Dictionary the term "police" has been defined as a "body of men and women employed to maintain order etc., the system of

regulation of preservation of order and enforcement of law". u/s 25 of the Evidence Act, the concept of Police Officer can be extended beyond the

expression in Section 1 of the Police Act, to cover any of those persons, who, like Police Officer coming within that defination, are so much

interested in obtaining conviction than any other member of the community is. In order to determine whether a person is a Police Officer or not, the

material thing to consider would be, not the name given to him nor the colour of the uniform he is required to wear, but his functions, powers and

duties they discharge. The question is, does the officer under a particular Act, exercise the power and discharge the duties of prevention and

detection of crime and maintenance of public safety and security. If he does, he is a Police Officer. Thus the term ''police'' is known by the duties

assigned to as have been described in Section 23 of the Act of 1861 as described above and Chapter 6 of the P.R.B., 1943.

15. I have stated all these to ascertain what are the duties of the Police and the Home Guards. The enunciations above reveal to any reasonable

man that the police force and the Home Guards called out to duty do the identical job viz., protection of persons, security of property and as

instrument about prevention of crime.

16. We may now take into consideration the points of differentiation as argued by Shri Dutta. The learned advocate for the Respondents argues

that the policemen are to render service round the clock, and the Home Guards are just a band of volunteers enrolled occasionally for certain

purpose and have no such responsibility as are the duties of the police force and their duties are restricted to only eight hours fixed and for that they

cannot be equated with the policemen. I have enunciated that the nature of functions discharged by both these two forces are more or less similar

and akin to each other. I have driven home the point that both the terms, ''Police and Home Guards'' having not been defined exhaustively

anywhere in any of the Acts or provisions produced before me, it is clear that the said two bodies and the services rendered by thern are to be

identified from the act and functions discharged by them. As I have stated above the dictionary meaning of the term ''police'' is, a body of men and

women employed to maintain order, which, in general, means, that the police is a system of regulation of a city, town or a district, for preservation

of order and enforcement of law. The purpose for which the Home Guards are enrolled as has been stated in Section 3 of the Act, 1962 is to

discharge such functions in relation to the protection of the persons, the security of property or the public safety as may be assigned to them in

accordance with the provision of the Act and the Rules made thereunder. Under Rule 7 framed u/s 9 of the Act the members of the Home Guards

have the duties:

i) to assist the police force in protection of civil population against the forces of crime and disorder,

ii) to work in close touch with Civil Defence,

iii) to perform such duties in connection with protection of persons, security of property or public safety.

17. These duties can hardly be differentiated from the duties of policemen u/s 23 of the Act of 1861. It must be noted that Home Guards are

constituted by none other authority than the District Police Officer for the functions described above, and, the provision u/s 6(1) of the Act

provides that they, in that case, do have same power, privilege and protection as a Police Officer and in the circumstances u/s 7 they are to act

directly in aid of police force under control of the Police Officer of such force. No other function of the Home Guards have been provided in law

and no officer is empowered to constitute Home Guards other than the District Head of Police.

18. It cannot, therefore, be gainsaid that the duties and functions of the policemen and the Home Guards are similar and akin to each other; or it

may better be said that the body of the Home Guards is constituted in a district or in Calcutta to aid and assist the police force and thus to

discharge the same functions in relation to protection of persons, the security of property or the public safety as are discharge by the policemen. It

has been laid down in Clause (a) Section 9 of the Act and Rule 7 (i) of the rules that the Home Guards are to act under the control of the Officers

of Police and act to ''aid'' and ''assist'' the police force. In the districts the Superintendents of Police alone are to constitute the body to be called

the Home Guards (as provided under Sections 3, 4 and 5 of the Act) and are responsible for the organisation; the purpose of constituting of which

body is to assist the police force in protection of civil population against the force of crime and disorder and to discharge all such duties as

described in Rule 7 (i), (ii) and (iii) which are, by and large, the duties of the policemen, and, while discharging such duties, the Home Guards, u/s

6(i) of the Act, do have the same powers, privileges and protections as policemen appointed under any Act. It must, therefore, be held that the

functions, the duties, the powers, privileges and protections of Home Guards have been provided in the concerned legislation to be the same and

similar as the members of police force. All these support the claims of the Petitioners that they do the same works and discharge the functions as

done by the police force at lowest-grade.

19. In this connection it must be noticed that Rule 6 provides for a regular course of training of the members of the Home Guards, the syllabus of

the course to be framed by the I.G. of Police. The Annexure-B of the writ petition reveals that such Home Guards are given training in Musketry

among others as provided u/s 5 and Rule 6. Rule 5 provides that every member of the Home Guards is bound to attend parades and lectures

regularly. The Police and Home Guards are subject to similar sort of discipline. None of the Home Guards can absent himself except with the leave

of District Commander etc. These provisions appear to be parallel to the Rules about control and discipline of the police force. There is no dispute

that the Government of West Bengal does have a regular branch of Home Department of it, called Home (Civil Defence) Defence for

administration and control of Home Guards.

20. Shri Dutta. however, argues that the Home Guards cannot be equated with policemen as (i) the policemen are appointed by the State

Government against sanctioned post, but, the Home Guards are enrolled by the Superintendent of Police and there is no sanctioned post for them;

(ii) the police force constitute regular service and the Home Guards are just some volunteers enrolled for some definite limited or specific purposes,

(iii) the policemen are responsible for duties round the clock but the Home Guards are daily-rated workers engaged for fixed eight hours of

service. These arguments of Shri Dutta have no substance and cannot but be disagreed with. When the Act was enacted in 1962 and since when

body of Home Guards was constituted, the term "volunteer" was nowhere in the Act. In Section 3 of the Act as well as in all other relevant

provisions of it the individual Home Guard was described as "member" of the Home Guard, and not as "volunteers" and their engagement as

"appointment". By amendment of the Act under the West Bengal Home Guards (Amendment) Act 1990 the term "member" was substituted

everywhere as "volunteers" and the term "appointment" as "enrolment". The amendment came into force on and from the October 1, 1989 and

could not have any effect before that. All the present Petitioners were appointed before that amendment came into force and were on the body of

Home Guards since long before this Amendment. Annexure to the writ petition support this case on the Petitioner. This Amendment of the Act did

not therefore have any effect when the Petitioners were appointed and the Amendment of 1990 cannot condition their working and divest them of

a right which already vested in them. The Petitioners therefore, cannot be found by the said Amendment. The amendment referred to above was

not given retrospective effect beyond October 1, 1989. This legislative intelligence and purpose cannot be questioned and nothing can be imported

to it, to suit the need of the litigents. The Petitioners are working as the Home Guards more or less since their first enrolment, with routine breaks

and recontinuance. As I stated, the same band of persons continue to render service for a total period of more than twenty years, despite such so-

called breaks, which cannot but held to be artificial camouflaged and eyewash. The Government undisputedly maintains a regular Department for

the Home Guards since the Act came into force and the Petitioners are continuing to render service despite the so-called routine breaks and

undertaking, for rendering service for five years, as referred to, which are thus taken by all to be sham and ineffective. All these Petitioners were

engaged u/s 3 of the Act which most of distinguished from Rule 8 of the rules framed under the Act. Clearly the Petitioners cannot be called

volunteers and the facts and circumstance reveal nothing but incidents of their regular service. The Petitioners cannot be affected by the

Amendment converting their ccnnotations as volunteers all on a sudden against their positive interest and rights vested in them, and, the

Amendment of 1990 as stated above does not have any effect in their case. The Petitioners therefore, must be held to be in regular service, since

the time they joined as Home Guards, no less than the police personnel, although motivatedly their service were shown to be punctuated by

camouflaged breaks, which speak of definite motive to deprive them of the legal consequences of continuity of service. Then again the argument of

Shri Dutta that the Home Guards are ''enrolled'' and, therefore, not ''appointed'' to any service and that distinguishes them from police force, has no

substance, as, the user of the term ''enroll'' by sub-sequent Amendment of the Act, cannot divest the Home Guards from the benefit of their

''appointment'' as ''member'' of Home Guards, as already was conferred on and thereby vested in them. In Section 1, para. 4 of the Police Act of

1861 the work ''police'' has been described as ''The word police shall include all persons who shall be enrolled under the Act''. Thus as because

the term ''enrolled'' has been provided in case of Home Guard substituting ''appointment'' it does not divest the later of the legal consequence of

their engagement and the application of that term does not distinguish the con-ditions of engagement of them from police as to the duty they

discharge.

21. Shri Dutta, however, draws the attention of the Court to Section 4 of the Act and, argues that Law provided althrough that the Home Guards

could be engaged from among the persons who were ''fit and willing to serve'' and, as such, the Act althrough provided that the persons so

engaged were ''volunteers''. They are, he says, ''willing to serve'' and as such nothing but volunteers. I respectfully differ from Shri Dutta. The

words ''fit and willing to serve'' cannot lead to any invariable conclusion that the persons who were found fit and willing to serve are nothing but

volunteers. The term as above just provides the qualification for the work. Nobody serves at all unless he is willing to serve. Any person who is

rendering any function whatsoever cannot but be held to be willing to do that function. There must be Animus i.e. a will, to act, for any act done by

a human being. Everyone, whoever he may be, joins hand to do anything because he is willing to do that work. Further the term ''service'' as used

in the provision prima facie indicates a service and the term, backed by the word ''appointment'' in the next line means a person who renders

service on being appointed, which goes ill with the connotation of ''volunteers''. Due only to this clause ''fit and willing to serve'' we cannot hold

invariably that the Home Guards are volunteers, other points discussed in this judgment going clearly against any such conclusion.

22. However, as we find in Rule 4 it has been laid down that service of the Home Guards shall ordinarily be voluntary and unpaid. These rules

were notified on November 13, 1962. Shri Ram argues that the Petitioners who were rendering service since after that Act came into force and

are earning their livelihood thereby since that time systematically, cannot be called volunteers'' and this act and contention of the Respondents are

patently fraudulent and exploitory. I shall deal with this point at some latter part of this judgment. I proceed to examine some other points of

contention before that.

23. The next point urged by Shri Dutta is that while a policemen render service for 24 hours the Home Guards are engaged only for fixed 8 hours

of the day. But the Respondents have not been able to show any provision of law from which it can be held that the Home Guards are to act only

for eight hours a day or for any fixed period of time and cannot be engaged beyond that. As discussed above the provisions of the Act lay down

that the Home Guards are engaged in discharging functions e.g. in relation to protection of persons, the security of property or public safety as may

be assigned to them in accordance with the provisions of this Act in aiding and assisting the police force, which obviously involve quelling riot, mob

disturbance, election duty controlling crimes, flood relief etc. It cannot be held in this perspective that they do not act or can refuge to act beyond

eight hours. Such duties patently go ill with the claim that one does not work more than eight hours or any fixed time. A Home Guard deputed to

any such duty while aiding and assisting police force cannot run away or refuge to work beyond any fixed hours, as no provision of law supports

any such claim of them. Any Home Guard refusing to act during exigency may, not only be discharged forthwith at the risk of loss of his livelihood,

but shall be prosecuted u/s 8 of the Act. This is a preposterous proposition and patently the argument is fallacious and also lacking legal basis and

confirmation in the acid test of facts.

24. The Petitioners have categorically stated in the writ petition that they render service in all respect equal to the policemen. This contention of the

Petitioners has never been challenged by any affidavit-in-opposition by the Respondents. The result is that the questions of facts stressed by the

Petitioners go uncontroverted. The Petitioners have produced some documents which also have not been contended. Annexure-A is an

appointment certificate in favour of the petitioneer No. 7. The petitionees claim that this sort of appointment certificate (not enrolment certificate)

are given to all the Home Guards at the time of their joining duty. These assertions have never been challenged by affidavit-in-opposition. It is

revealed from Annexure-A that the Petitioners were appointed as members of the Home Guards u/s 3 and 4 of the Act of 1962. The appointment

of the petitioneer No. 6 appears to be on and from January 1, 1966 in the same way. These Appointment Certificates are similar to those issued to

policemen u/s 8 of the relevant Act. The Petitioners claim that they, appointed as such under the Act of 1962, are working for a period of covering

20 years or more as such, the dates of appointment varying a little from person to person among the Petitioners. The Petitioner No. 7 is working

from January 7, 1966 and the Petitioner No. 2 as the Annexure-B proves, from before November 7, 1971. The latter document establishes that

he was deputed to training in traffic and musketry practice. All the materials on record reveal that they are the members of a permanent body, and,

not a body constituted in response to any temporary requirement or particular occasion and they have clear continuity of service for years together.

Their appointment should be distinguished from the Home Guards as called out under Rule 8 of the Home Guards Rules. The Petitioners were,

therefore, appointed in a service under Sections 3 and 4 of the Act, since long before the Amendment of 1990, dated back to October 1, 1989,

and their functions and duties are same as those of the members of the police force in the lowest grade i.e. constabulary, and they are to aid and

assist the police forces in all the duties the later body discharge as is revealed from the Act itself.

25. Shri Dutta urges two more points viz. (i) that the members of the police forces are appointed by the State Government and there are regular

cadre strength and sanctions for their posts. But the body of the Home Guards is constituted in the districts by the Superintendent of Police. Hence

Petitioners cannot claim that they are entitled to equal-work-equal-pay with the police; and (ii) the Home Guards are never ''appointed'' to any

service but some volunteers are just ''enrolled'' do some work, and, as per law, they join hands to do the jobs voluntarily against allowance for

expense and for that they are not entitled to any salary. The Respondents allow them some financial assistance by way of allowances revised from

time to time and they cannot claim anything more.

26. It is not at all correct that all the policemen are appointed by the State Government. Appointing Authorities of the State Government servants

are as provided in part III Rule 6 of West Bengal Services (Classification, Control and Appeal) Rules, 1971 (hereinafter referred to as the Rules of

1971) and Schedule I as framed thereunder. As per Item No. (7) of part II of the Schedule I that is, relating to Departments or Offices outside the

Secretariate, in the District Police Offices Class III Policemen are appointed by the D.I.G. and Class IV men by the Superintendent of Police.

None of them is appointed by the State Government. On the same basis the Petitioners who claim parity with Class IV members of police force

are engaged by the Superintendent of Police. It is true that the policemen are recruited against cadre strength sanctioned by the Government as

provided in Section 2 of the Police Act, 1861. Similarly u/s 4 of the Act of 1962 the Superintendent of Police appoints as many persons as Home

Guards "as he may be authorised by the State Government It means nothing but the fact that the Home Guards appointed under Sections 3 and 4

of the Home Guards Act 1962, as distinguished from Rule 8 also are appointed against their cadre strength sanctioned by the State Government,

and not at the pleasure or decision of the District Officer. As discussed above, they work in aiding and assisting the police force and while working

as such they do have same powers, privileges and protections similar and equal to the Police Officers [Section 6(i), Section 7 and Rule 7 (i)].

27. As to the other point, I have discussed above that while these Petitioners were recruited they were appointed, not as volunteers but as

members of Home Guards constituted under Sections 3 and 4 of the Act, which body is a permanent body, and the user of the term "enrolment"

makes no difference as it has been used in case of police as well, as may be found from Section 1 para 4, penaltimete paragraph of the

Interpretation Clause of 1861 Act.

28. There are, therefore, two cadres, one is the police forces and the other the Home Guards. Both the cadres are permanent bodies controlled by

two separate regular branches of the same Home Department if the Government. Irrespective of any individual Home Guard continuing for any

length of time, the body appears to be a permanent body constituted under the Act of 1962 and is continuing althrough since then, alike the police

force. While the policemen in Class IV grade get salary in regular scales, increments, leave and terminal benefits the other cadre, the Home

Guards, of which the Petitioners are members, rendering similar service are deprived of any such benefit, and, for years after years work as daily-

rated workers on no-work-no-pay basis. But there is no reasonable basis of the differentiation. Clearly this act of the Respondents offends the

Articles 14, 16, 23 and 39 of our Constitution.

29. In this connection two points should be carefully considered. The Act of 1962 provides for calling out of Home Guards under Sections 3 and

4. The Petitioners were recruited under these provisions of law. The calling out of Home Guards under Sections 3 and 4 clearly means recruitment

of Home Guards in a permanent cadre (although not surely against permanent posts), as per cadre strength sanctioned by the State Government

(Section 4). The recruiment under Sections 3 and 4 are against permanent and standing requirement of the State service as distinguished from

occasional or for any particular purpose, as a provided specifically under Rule 8. The Rule 8 if quoted at this context, will make the point cleat.

The Rule provides:

Order for calling out Home Guard-A Home Guard in its entirely or such portion thereof as the Superintendent of Police or the Commissioner of

Police, as the case may be, thinks fit may be called out on any particular occasion and for such purpose a written order shall be issued in a district

by the Superintendent of Police and in Calcutta by the Commissioner of Police.

30. The calling out of the Petitioners under Sections 3 and 4 (as is found from the Annexed documents filed) is for permanent and standing

requirement of the State. Their recruitment must not be confused with the recruitment of some hands on any particular occasion, say the pujas,

elections, flood etc. Those recruited under Rule 8 for particular occasion are disbanded after the occasion. Their recruitment being for temporary

purpose they cannot outlive the said purpose and must be disbanded. Their appointment should be distinguished from the present Petitioners who

were working for years together punctuated with camouflaged artificial breaks or ineffective eye-wash of contract for any definite period of time as

is evinced from the facts of their engagement their dropping and turning again.

31. The recruitment of the Home Guards should also be considered in its historical aspects. The body, as is well known, was first called out under

the emergency of Chinese Agression. At that time the purpose for recruitment might have been transient, i.e. for the particular occasion and the

gravity of the purpose as it then was excepted from Article 23. But undoubtedly the body is continuing outliving the purpose for which it first came

into being, and that or any such transient natural requirement can no longer be invoked. It is now a permanent body of persons rendering service to

the State years after years cheek by jowl with the police forces, aiding and assisting the police forces in any sphere of police administration, and,

the Petitioners, despite eye-wash of breaks render service for years and even now. But by the preposterous legal provisions, as are found in Rule

4, the service (as the term is used in that section) has been made voluntary and unpaid except for a meagre allowance and no terminal benefit or

leave facility as is embodied in Notification No. 220-HCD/H.G.-37/95 dated September 26, 1995. These, I am satisfied, offend Article 23 of the

Constitution, in addition to Articles 14 and 16. It has been amply demonstrated that the differential treatment as assailed at in this case is irrational

and based on no basis and is prepetrated malafide in fact and atrocious in law.

32. Citizens may be called upon to render begar in the interest of the country or the nation during any emergency as might have been done during

the Chinese Agression in 1962 when the Home Guard came into existence as voluntary organisation, as it was in the interest of public policy and

the Nation, and was protected under Article 23(2). But that purpose has lost its efficacy at present. The Respondents reorganised the body and

planned to put it to parmanent use claiming begar from these citizens year after year. At present the Respondents cannot be protected under

Article 23(2) against payment of paltry amount of allowance and exacting same work as policemen. It is true that these Petitioners like their

battalion of other colleagues have accepted the job knowing full well the condition laid under Rule 4. It is atrocious and shocking to maintain that

by exploiting their deplorable financial condition the State would exact begar (forced labour) from a group of persons throughout their lives, or, at

least so long they have working capability and can render effective service, at nominal payment of allowances at will, making capital of their

poverty and exact labour similar to another group of citizens who would get much better emoluments and service benefits, and then at the age of

sixty they would just be thrown away like garbage without any benefit of such lifelong service. This is sheer exploitation by State taking the

advantage of poverty of that group of the citizens and is ultra vires as offending Articles 14, 16 and 23. This is nothing but exacting forced labour

by exploiting poverty of the Petitioners which is prohibited under Article 23 People"s Union for Democratic Rights and Others Vs. Union of India

(UOI) and Others, and Sanjit Roy Vs. State of Rajasthan, The Rule 4 making such service of the members of a perennial body as voluntary and

unpaid clearly offends Articles 14, 16 and 23 of the Constitution. The argument that the Petitioners accepted the job being fully aware of the rule is

fallacious unreasonable and contrary to judicial pronouncement and constitutional guarantees and must be rejected. In Phanindra Chandra Roy v.

Calcutta State Transport Corporation 1990 (2) C.L.J. 334. Mukherjee, J. (as His Lordship then was) held that "the Court must strike down an

unfair or unreasonable contract inequality of bargaining power being the result of disparity in economic strength of contracting parties." The Rule 4

and the G.O. No. 5220-HCD/HG-37/95 dated September 26, 1995, therefore, cannot but be held ultra vires.

33. Mr. Dutta has relied upon some ruling after examining all of which I am satisfied that all those should be respectfully distinguished as not at all

applicable to this case. Delhi Development Horticulture Employees Union relates to Jawahar Rozgar Yojna, a temporary Government scheme just

for providing employment on daily basis for rural poor for the period when they do have no other source of livelihood, and that too through

registered autonomous society. This ruling is at poles as under from the instant case and cannot fit in with it on any point of fact and law. By

Jawahar Rozgar Yojna the Union of India evolved several scheme to provide income for those who are below poverty line. That scheme is to start

tackling the problem of rural poverty at some particular part of the year with particular purpose of providing subsistence income to some people

below poverty line. The purpose of that J.R. Yojna cannot be equated with the perennial type of work for which the body of the Home Guards is

recruited under Sections 3 and 4 (to be distinguished from those recruited under Rule 8 and continuing for year after year. While Jawahar Rozgar

Yojna was floated to keep the rural population from starvation, the purpose of constitution of Home Guards as stated in Section 3 of the Act is for

sub-serving definite perennial requirement of the administration like second fiddle to police administration.

34. The unreported Ruling in State of West Bengal (Supra) must also be distinguished on the question of fact and law. The similarity ends in both

the cases only being about Home Guards. But that matter differs from this one on all the questions of fact and law involved. In that unreported

ruling it was not disputed by the Petitioners in that matter, that Civil Defence is a voluntary organisation and the Home Guards are volunteers. In

this case this point has been strongly challenged and vires of the provisions of the relevant Act describing the Home Guards as volunteers has been

assailed strongly. The said ruling was on the point of law, whether, those writ Petitioners were entitled to get allotment of duty as a matter of right

although admitting that they were volunteers. There is no such point involved in this case before us and hence the finding that the Court cannot

direct allotment of duty and regulation of service of the volunteers has nothing to do with this case and for that it should be respectfully

distinguished.

35. In the third ruling, an unreported ruling in Ram Manohar Das Sharma (Supra) which also is related to some Home Guards who were demobed

Army personnel employed on the basis of temporary need time to time. Supreme Court held that they were not entitled to regularisation. This ruling

also should be distinguished on the point of fact. The Petitioners in this case, unlike those demobed Army personnel, were not "employed on the

basis of temporary need from time to time. These Petitioners were called out for purpose which were perennial in nature and they render service

for long period of time continuously, but subjected to camouflaged breaks, which are nothing but eye-wash and continuous fraudulent exploitation

exercised for a long time. That case is also must be respectfully distinguished.

36. On the contrary the rulings reported in Dhirendra Chamoli (Supra) in and Surindar Singh the Supreme Court held in cases more or less

identical to this one in favour of the Petitioners, deprecating discrimination. In the ruling reported in Dhirendra Chamoli (Supra) a number of

persons were engaged to Nehru Yubak Kendra as casual workers on daily wages basis and though they were doing the same work as is

performed by Class IV employees appointed on regular basis they were not given the same salary and allowances as were being paid to Class IV

employees. In that case counter affidavit was filed envisaging argument that since the Petitioners accepted the job knowing the conditions of their

service fully well and there were no sanctioned post to which regular appointment would be made the said casual labourers could not claim to

receive the same salary and perquisities as Class IV employees appointed regularly. The Supreme Court held:

... it is difficult to understand how the Central Government can deny to these employees the same salary and conditions of service as Class IV

employees regularly appointed against sanctioned posts. It is peculiar on the part of the Central Government to urge that these persons took up

employment with the Nehru Yubak Kendras knowing fully well that they will be paid only daily wages and, therefore, they cannot claim more. This

argument lies ill in the mouth of the Central Government for it is an all-too-familiar argument with the exploiting class and a welfare state committed

to a socialist pattern of society cannot be permitted to advance such an argument. It must be remembered that in this country where there is so

much unemployment, the choice for the majority or people is either to starve or to take employment on whatever exploitative terms are offered by

the employer. The fact that these employees accepted employment with full knowledge that they will be paid only daily wages and they will not get

the same salary and conditions of service as other Class IV employee cannot provide any escape to the Central Government to avoid the mandate

of equality enshrined in Article 14 of the Constitution. This Article declares that there shall be equality before law and equal protection of the law

and implicit in it is the further principle that there must be equal pay for work of equal value. These employees who are in the service of the

different Nehru Yubak Kendra in the country and who are admittedly performing the same duty as Class IV employees, must, therefore, get the

same salary and conditions of service as Class IV employees. It makes no difference whether they are appointed in sanctioned posts or not So

long as they are performing the same duties, they must receive the same salary and conditions of service as Class IV employees." The Supreme

Court directed the Central Government to accord to the said persons employed as Casual worker on "the same salary and conditions of service as

are being received by Class IV employees, except regularisation which cannot be done since there are no sanctioned posts. But we hope and trust

that posts will be sanctioned by the Central Government in the different Nehru Yubak Kendras, so that these persons can be regularised. It is not

at all desirable that any management and particularly the Central Government should continue to employ persons on casual basis in organisations

which have been in existence for over 12 years. The salary and allowances of Class IV employees shall be given to these persons employed in

Nehru Yubak Kendras with effect from the date when they were respectively employed.

37. That principle was followed by the Supreme Court again in the case reported in Surinder Singh (Supra). Some persons were employed by the

C.P.W.D. on daily wages basis and they having so working for several years demanded that they should be paid the same wages as permanent

employees employed to do identical work. They stated that even if it was not possible to employ them on regular basis for want of similar number

of posts there was no reason whatsoever why they would be denied equal pay for equal work. The Appex Court held in that case that:

The Central Government like all organs of the State is committed to the Directive principles of State Policy and Article 39 enshrines the principle of

equal pay for equal work. In Randhir Singh v. Union of India, this Court has occasion to explain the observations in Kishori Mohan Lal Bakshi v.

Union of India and to point out how the principle of equal pay for equal work is not an abstract doctrine and how it is a vital and vigorous doctrine

accepted throughout the world, particularly by all socialist countries. For the benefit of those that do not seem to be aware of it, we may point out

that the decision in Randhir Singh Case has been followed in any number of cases by this "Court and has been affirmed by a Constitution Bench of

this Court in D.S. Nakara v. Union of India. The Central Govt., the State Govts. and likewise, all public sector undertakings are expected to

function like model and enlightened employees and arguments such as those which were advanced before us that the principle of equal pay for

equal work is an abstract doctrine which cannot be enforced on a Court of law should ill come from the months of the State and State

Undertakings. We allow both the writ petitions and direct the Respondents, as in the Nehru Yubak Kendras Case to pay to the Petitioners and all

other daily rated employees to pay the same salary and allowances as are paid to regular and permanent employees with effect from the date when

they were respectively employed.

38. These rulings leave no scope for doubt that the Petitioners are entitled to get the reliefs prayed for.

39. The same principle permeates the legal framework of this country and was reiterated by the Supreme Court in the ruling reported in P.K.

Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, affirming the decision in Randhir Singh Vs. Union of India (UOI) and Others,

40. In State of Madhya Pradesh and Another Vs. Pramod Bhartiya and Others, a three Judges'' Bench of Supreme Court held:

Equal pay for equal work, it is. self evident, is implicit in the doctrine of equality enshrined in Article 14, it flows from it. Because Clause (d) of

Article 39 spoke of equal pay for equal work for both men and women'' it did not cease to be a part of Article 14. To say that the said rule having

been stated as a Directive Principle of State Policy is not enforceable in a Court of law is to indulge in sophistry. Parts IV and III of the

Constitution are not supposed to be exclusionary of each other. They are complementary to each other. The rule is as much a part of Article 14 as

it is of Clause (1) of Article16. Equality of opportunity guaranteed by Article 16(1) necessarily means and involves equal pay for equal work. It

means equally that it is neither a mechanical rule nor does it mean geometrical equality. The concept of reasonable classification and all other rules

evolved with respect to Articles 14 and 16(1) come into play wherever complaint of infraction of this rule falls for consideration. This is the

principle affirmed in Randhir Singh v. Union of India as well as in the subsequent decisions of this Court. It would be instructive to notice a few of

them.

41. Their Lordships quoted with approval the principle laid down in Randhir Singh (Supra).

Construing Articles 14 and 16 in the light of the Preamble and Article 39(d) we are of the view that the principles equal pay for equal work is

deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification

though those drawing the different scales of pay do identical work under the same employer.

42. In State of U.P. and Others Vs. J.P. Chaurasia and Others, the Supreme Court held:

In matter of employment the Government of socialist State must protect the weaker sections. It must be ensured that there is no exploitation of

poor and ignorant. It is the duty of the State to see that the underprivileged or weaker sections get their due. Even if they have voluntarily accepted

the employment on unequal terms, the State should not deny their basic rights of equal treatment. It is against this background that the principle of

''equal pay for equal work'' has to be construed in the first place. Second, this principle has no mechanical application in every case of similar

work. It has to be read into Article 14 of the Constitution.

43. In this perspective the argument of Mr. T. Dutta that the Rule 4 of the West Bengal Home Guards Rules 1962, made effective from November

13, 1962, provided that the ''service in the Home Guards shall ordinarily be voluntary and unpaid'', and that, one rendering service in the Home

Guards shall only get some allowances, and also that, the Petitioners joined the service being fully aware of the Rule 4, does not appear to have

any substance. The State cannot appropriate the advantage of the grim proverty of some of its citizens and exploit them and compel them to sell

their labour for such discriminatory payment or face starvation. The Rule 4 ultra vires Articles 14, 16, 23 and 39(a) and 39(d) of the Constitution.

Mr, Dutta argues that the Court has no role to play in this respect and the Court can neither direct the Executive nor the Legislature to frame a

service cadre for the Home Guards or to make Rule/Act therefor. The fallacy of the argument is revealed from the findings of the Supreme Court

as in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, In the light of the observation of the

Supreme Court in that case we must held:

These employees had no powerful workmen''s Union to support them. They had no voice in the framing of the said Rules. They had no choice but

to accept the said Rules as part of their contract of employment. There is gross disparity between the Corporation and its employees, whether they

be workmen or officers. The corporation can afford to dispense with the services of an officer. It will find hundreds of others to take his place. But

an officer cannot afford to lose his job because if he does so, there are not hundreds of jobs waiting for him.

44. The Rule 4 and the G.O. No. 5220-HCD/HG-37/95 dated September 26, 1995 were, therefore, unilaterally thrust upon the Home Guards

who had to accept the case as the weaker party in the interest of their stomach. The alternative was to go without job and face death in starvation.

This attitude on the part of the State in forming this Rule and the G.O. referred to was shockingly exploitory and an attempt to take the advantage

of grim penury of a section of its citizens making unreasonable discrimination with some other section of citizens who do the same nature of work.

It is a clear instance where the strong tramples underfoot the right of the weak, without capacity of bargaining except at their peril of losing their

livelihood. The Petitioners render service years after years, but subjected to the unscionable oppression in the form of artificial breaks, false

contracts for service for five years, and no perquisites, leaves etc., and finally, no terminal benefit for long service, and, compelled to submit to

discriminatory and exploitory treatment as discussed above, only on the pain of starvation or death.

45. In this perspective I lay down my view borrowing the language from the Supreme Court as reported in Central Inland Water Transport

Corporation Ltd. (Supra).

Should then our Courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we

not adjust out thinking caps to match the fashion of the day ? Should all jurisprudential development pass us by, leaving us floundering in the

sloughs of nineteeth-century theories ? Should the strong be permitted to push the weak to the wail ? Should they be allowed to ride roughshod

over the weak ? Should the Courts sit back and watch supinely while the strong trample under foot the rights of the weak ? We have a

Constitution for our country. Our Judges are bound by their oath to ''uphold the Constitution and the laws''. The Constitution was enacted to

secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law

and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and

reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that

the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable

clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this

type. No Court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For

instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the

contracting parties. It will apply where the inequality is the result of circumstances, whether the creation of the parties or not. It will apply to

situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed

by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice but to give his assent to a

contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however, unfair,

unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining

power of the contracting parties is equal or almost equal.

This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today''s complex world of giant

corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every

branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing

wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The Court must Judge each

case on its own facts and circumstances.

46. The step-motherly discriminatory attitude as meted out to these Petitioners vis-a-vis other employees of the State Government is more clear

from a G.O. of the Government of West Bengal in the Labour Department bearing No. 1700-EMP/3C-26/78 dated August 3, 1979 in that

Respondent laid down "Principles to be followed in the matter of absorption of casual and such other categories of workers under the State

Government. In para 3 of the G.O. the Respondent State Government laid down:

Casual and such other categories of workers who have been engaged in a perennial type of work for a continuous period of more than three years

may be absorbed in the regular establishments on temporary basis in existing vacancies. If suitable vacancies are not available necessary steps may

be taken by the respective authorities to creat the requisite number of posts for the purpose of absorption of such categories of workers in

consultation with the Finance Department.

Notwithstanding anything contained in the recruitment policy circulars issued by the State Government from time to time, 5% of vacancies against

the quota of 7% earmarked for recruitment through Employment Exchanges shall be kept reserved for absorption of those casual and such other

categories of workers, who are already engaged in perennial type of work and have rendered at least 240 days" service in a year but have not

completed three years" service as yet.

While filling up vacancies in the regular establishments duly qualified seasonal workers who have worked for five years or more in consecutive

seasons shall be considered for appointment by the respective Employing Authorities along with the candidates sponsored by Employment

Exchange.

47. As to the subject of the context it has been stated in para 8 of the G.O.:

Unless there is anything repugnant in the subject of context:

Casual and such other categories of, workers would mean casual workers, daily-rated workers, muster-roll workers and such other categories of

persons as may be specified from time to time by Government.

Provisions contained in this Memorandum shall apply to all Departments.

48. There is no reason why the Petitioners cannot get the benefit bestowed on other workers of the State Government engaged as casual workers

and daily-rated workers. In some other cases the State Government conceded the claim of daily rated workers working for a long time and

regularised them is evident from the order in Ashish Kumar Rakshit v. State Order dated April 24, 1997 in Matter No. 128 of 1994. The contrary

conduct as meted out to those Petitioners surely ultra vires in Articles 14, 16, 23 and 39(a) and 39(d) of the Constitution.

49. The writ petition is allowed on contest. The Rule 4 of the West Bengal Home Guards Rules, 1962 and its proviso, the Section 5, 6(3), 7(1),

7(2), 8, 9 and 10 of West Bengal Home Guards (Amendment) Act, 1990, the Government Order No. 5220-HCD/HG-37/95 dated September

26, 1995 are struck down as ultra vires.

50. The prayers of the Petitioners are allowed to the extent that the Respondents shall give equal salary, allowances, leave, other perquisites and

terminal benefits to the Petitioners as are allowed by the service standard to the police personnel of Class IV category of the same seniority in

service, with effect from the dates on which the Petitioners were respectively appointed for the first time. All the necessary steps as directed should

be taken within three months from this date for according, as above as may accrue to the Petitioners, the equal salary, perquisites and terminal

benefits (in appropriate cases) at par with the Police force of Class IV grade calculating from the dates of appointment.