

**(2002) 09 DEL CK 0157**

**Delhi High Court**

**Case No:** CWP 2391 of 1999

Delhi Homeguards Welfare  
Association (Delhi Pradesh)  
(Registered)

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

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**Date of Decision:** Sept. 18, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16(1)
- Delhi Home Guards Rules, 1959 - Rule 8

**Hon'ble Judges:** S.B. Sinha, C.J; A.K. Sikri, J

**Bench:** Division Bench

**Advocate:** S. Mehdi Imam, for the Appellant; V.K. Tandon, for the Respondent

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### **Judgement**

S.B. Sinha, C.J.

The first petitioner is an association of Home Guards. They were appointed in terms of the provisions of Bombay Home Guards Act, 1947. The said Act has been extended to Delhi. They are allegedly appointed with a view to assisting the regular police personnel to maintain law and order. Although they initially were appointed on voluntary basis, they used to receive honorarium for their services. However, they performed the job of regular employees. The Delhi Administration issued a notification, inter alia, for regulating the rules of the Home Guards, Rule 8 whereof reads thus:

"8. Term of Office - The term of office of a member of the Home Guards shall be three years.

Provided that the appointment of any such member may, at any time be terminated by the Commandant General or the Commandant, as the case may be, fore the expiry of the tem of office-

(a) by giving one month's notice, or

(b) without such notice, if such member is found to be medically unfit to continue as a member of Home Guards."

2. Having regard to the fact that Home Guards are appointed for a period of three years, they are normally discharged from service upon expiry of the said period or re-appointed. An organization known as Home Guards Organization was also formed which allegedly became very useful in maintaining day-to-day law and order situation. There are about 25000 members in the association and they had been working for more than 25-30 years now. However, fresh appointments were stopped as it was alleged that officials of the said Home Guard Organization had been taking money and in some cases they had been caught red-handed. Large number of discharge orders without assigning reasons were issued in terms of the notification dated 28th July 1959 and in particular in terms of Rule 8 afore-mentioned. In the afore-mentioned premises, the petitioners have filed this petition praying for the following reliefs:

"(i) By issuance of an appropriate writ, direction and order in the nature of mandamus declaring the provisions of Rule 8 of the Delhi Home Guards Rules 1959 as illegal, arbitrary and ultra virus to the provisions of Articles 14 and 16(1) of the Constitution of India;

(ii) declare the provisions of Section 4 of the Bombay Home Guards Act, 1947 also illegal, arbitrary and ultra virus to the provisions of Article 16(1) of the Constitution of India for the reasons that the aforesaid Section is wholly unguided, arbitrary for the reasons it permits use of illegal, arbitrary provisions without adherence to the principles of natural justice and is not in consonance with the latest principles of natural justice enunciated by the Courts in its modern judgments.

(iii) issue a writ, direction or order in the nature of mandamus and / or a like nature writ, inter alia, declaring all such discharge orders illegal and arbitrary done in exercise of such rules.

(iv) issue a writ, direction or order in the nature of mandamus directing the respondents to formulate and propound a scheme or policy as has been already directed by this Hon"ble Court and the Central Administrative Tribunal formulating a scheme to absorb all the members of the force of home guards, and to ensure that there are no such discharge orders in future, and, in the alternative, direct regularisation of such home guards who have completed three years of regular services on the basis of their seniority.

(v) prohibit the respondents by issuance of an appropriate writ, direction or order in the nature of prohibition, prohibiting the respondents from indiscriminately discharging the members of the petitioner association or any other writ, direction or order in the like nature may be issued;

(vi) issue an appropriate writ, direction or order in the nature of mandamus directing the respondents to fix the seniority of the home guards from the dates of their respective joinings on the basis of the principles of "last come first go."

(vii) award costs of the present writ petition;

(viii) and pass such other and / or further orders as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case."

3. A question as to whether the Home Guards have a legal right to maintain a writ petition fell for consideration of this court in *Rajesh Mishra and Ors. v. Govt. of NCT of Delhi and Ors.*, CWP 4388/2001 decided on 29th April 2002 wherein this court upon taking into consideration a large number of decisions viz. *Man Sukh Lal Rawal and Ors. v. Union of India and Ors.*, CWP No. 4286/1997 decided on 26th May 1999 by a Division Bench of this Court, *Rameshwar Dass Sharma and Ors. v. State of Punjab and Ors.* SLP (Civil) 12465/90, [Secretary, H.S.E.B Vs. Suresh and Others etc. etc., Daily Rated Casual Labour Employed under P and T Department Vs. Union of India \(UOI\) and Others](#), [Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.](#), [Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc.](#), [D.C. Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal, Madras](#), *Union of India and Anr. v. U.D. Dwivedi* AIR 1977 SC 1313, [State of Haryana and others Vs. Piara Singh and others etc. etc.](#), [Lakshminarayan Ram Gopal and Son Ltd. Vs. The Government of Hyderabad](#), *Chander Bhusan Rai and Sons v. Govt. of NCT of Delhi and Anr.*, CWP No. 3600/2001 decided on 21st February 2002 by a Division Bench of this court, held that the Home Guards are not civil servants. However, it was observed:

52. Home Guards are not meant to be appointed in ordinary course. The Government is supposed to make appointments in terms of the said Act, as a result whereof a relationship of master and servant is not to come into being, as thereby a constitution of disciplined volunteer force is contemplated.

53. Any deviation from the said legislative policy would be ultra vires.

54. In the event, it is found by the State that vacancies occurring in these various Departments should be filled up, the same should be done in accordance with law.

55. In the event, the cadre strength is required to be increased, recourse thereto must be taken in accordance with law, but the authorities of the respondent No.1 must remember what cannot be done directly, cannot be permitted to be done indirectly.

56. It is also high time that the Appropriate Government should devolve an appropriate scheme in relation to the Home Guards, who have been rendering services for a number of years.

4. Following the afore-mentioned decisions, this writ petition is also disposed of in the afore-mentioned terms without any orders as to costs.

5. Before parting with the judgment, we may observe that before us a copy of the purposed policy guidelines dated 18th January 2000 issued by the government of NCT of Delhi has been filed. We hope and trust that in future, as regards the terms and conditions of the Home Guards, the said policy decision would strictly be followed.