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Court No. - 75

Case :- WRIT - A No. - 2829 of 2022

Petitioner :- Rajveer Singh And 62 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Sudhir Kumar Singh

Counsel for Respondent :- C.S.C.

AND

Case :- WRIT - A No. - 1527 of 2021

Petitioner :- Shamsher Ahmad And 5 Others

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Shailesh Verma

Counsel for Respondent :- C.S.C.

AND

Case :- WRIT - A No. - 1216 of 2021

Petitioner :- Provincial Rakshak Dal Employees Welfare Association And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shailesh Verma

Counsel for Respondent :- C.S.C.

AND

Case :- WRIT - A No. - 11308 of 2021

Petitioner :- Amar Singh And 11 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Sudhir Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. All the above noted writ petitions are being decided by means of this common order. For the sake of convenience Writ – A No.2829 of 2022 is being taken up as a leading case.

2. The petitioner in all the writ petitions are selected and are posted in Prantiya Rakshak Dal (PRD) in several districts and seek parity in terms of the benefits as are being paid to Home Guards appointed in a manner

similar to the petitioners and under the provisions of an Act, which is similar being The Uttar Pradesh Home Guards Adhiniyam, 1963.

3. The facts, in brief, are that the petitioners were selected and posted in the Prantiya Rakshak Dal in terms of the mandate of United Provinces Rakshak Dal Act, 1948 as amended. It is argued that the said Prantiya Rakshak Dal was enacted in the year 1948 for constitution of a force known as 'U.P. Prantiya Rakshal Dal/Vikas Dal' for the preservation of public peace, training of men in the use of arms inculcate self-help and discipline and the protection of the life of community and property within the Uttar Pradesh.

4. It is argued that on the similar lines, an act known as 'Uttar Pradesh Home Guards Adhiniyam Adhiniyam, 1963' was enacted for providing for constitution of a force known as Uttar Pradesh Home Guards for utilizing their services for duties in the time of emergency and serving as an auxiliary to the police for the maintenance of land and order. It is argued that although the Act provide for creation of Rakshak Dal/Vikas Dal for preservation of public peace and training of men in arms as an auxiliary force, however, their services are availed during normal time also and during local or national emergency. It is argued that even a dress is prescribed for the members of the Dal. It is argued that the Prantiya Rakshal Dal comes under the Yuwa Welfare Department of the State Government and is called as 'Pradeshik Vikas Dal' and several government orders have been issued from time to time regarding providing the duty and payment to the members of the said Dal. Attention has been drawn to the Government Orders issued to the District Magistrate as contained in Annexure – 2 to the writ petition.

5. The petitioners in all the petitions have undergone the required training and have obtained the certificate and are discharging their duties time to time whenever required to do so by the government. Reliance is also placed on the government orders issued regarding the duties and conduct of the members of the Dal. It is argued that the Home Guards

appointed under the Uttar Pradesh Home Guards Adhinyam as well as the once under the Prantiya Rakshak Dal were being paid daily duty allowance at the same rate at Rs.126/- per day till 2009, however, in the year 2010, the allowance payable to the Home Guards Jawans were increased to Rs.140/- per day and further to Rs.210/- in the year 2013 and subsequently, it has been further enhanced, however, the members of the Prantiya Rakshak Dal continued to get Rs.126/- till the year 2013. The petitioners approached the State Government requesting that when the nature of the work, the manner of appointment is similar, the remuneration payable to them should be similar to Home Guard volunteers, however, the same has not been done citing the problems of budgetary allocations. It is argued that the allowance payable to Home Guard Jawans was increased to Rs.500/- on 27.08.2018 from Rs.375/- being paid earlier, however, no such action was taken in respect of the Prantiya Rakshak Dal Jawans.

6. Aggrieved against the said, some of the persons similarly situated approached this Court by filing Writ – A No.17684 of 2018 (Amar Singh & 4 Ors. v. State of U.P. & Anr.). The said writ petition was disposed off on 07.01.2019 with directions to the State Government to consider the grievances and to evaluate the same within a period of three months. As the directions given by the Court were not complied with, contempt petition was filed. In terms of the said directions, ultimately an order came to be passed on 01.05.2019 increasing the allowances payable to the Prantiya Rakshak Dal Jawan of Rs.375/- per day from earlier Rs.250/- per day. Grievances of the petitioners still continued without any rationale basis, the petitioners have been discriminated, as such, the present petitions have been filed.

7. In view of the facts as narrated and recorded in the writ petitions, the entire petitions are premised on the allegation of violation of Article 14 of the Constitution of India.

8. To test the said argument, it is essential to notice the manner in which the two Acts have been enacted. The same are as under:

<p>The Uttar Pradesh Prantiya Rakshak Dal/Vikas Dal Act was enacted in the year 1948 with a view to constitute a force for the preservation of public peace.</p>	<p>The Uttar Pradesh Home Guards Adhiniyam was enacted in the year 1963 for constitution of a force and for utilizing its services in the times of emergency as an auxiliary to the police for maintaining law and order.</p>
<p>Functions of Prantiya Rakshak Dal were described as under: “5. A member of the Prantiya Rakshal Dal/Vikas Dal when called upon to do so by the prescribed authority, shall discharge such functions in relation to the preservation of public peace and for the protection of inhabitants and the security of property in such area within the Uttar Pradesh as such prescribed authority may direct.”</p>	<p>Functions of Home Guards are described as under: “4. The Home Guards will have the following functions:- (a) they will serve as auxiliary to the police, and when required help in maintaining public order and internal security; (b) they will help the community in air raids, fires, floods, epidemics and other emergencies; (c) they will function as an emergency force for such special tasks as may be prescribed; (d) they will provide functional units for essential services; and (e) they will perform such other duties relating to any measure of public welfare as may be prescribed.</p>
<p>Powers, protection and control etc., are defined as under:</p>	<p>Powers, privileges and protection of Home Guards are defined as under:</p>
<p>7.(1) For the enforcement of the provision of this act or any rule or regulation made thereunder every member of the Prantiya Rakshal Dal/Vikas Dal shall, when on duty or called for duty, be deemed to be a police officer and subject to any terms, conditions and restrictions as may be prescribed, to have and be subject to, in so far as it is not</p>	<p>9. (1) Subject to the provisions of this Act and the rules made thereunder, a home guard when called out under section 8 to serve as auxiliary to the police or to help in maintaining public order or internal security, shall have the same powers, privileges and protection as a member of the police force appointed under any</p>

<p>inconsistent with this Act, all the powers, privileges, liabilities and protections, as a police officer duly appointed has or his subject to by virtue of the Police Act, 1861 (save section 29 thereof), or of any other law for the time being in force.</p> <p>(2) No prosecution shall be instituted against a member of the Prantiya Rakshal Dal/Vikas Dal in respect of anything done or purported to be done by him in discharge of his functions as such member, except with the previous sanction of the authority prescribed in that behalf.</p> <p>(3) The superintendence of the force in an area shall vest in such officer or officers as may be appointed by the State Government.</p>	<p>enactment for the time being in force, and shall subject to such adaptations and modifications, as may be made therein by the State Government by notification in the Gazette. be subject to the provisions of the Police Act. 1861. and the rules or regulations made thereunder in the same manner and to the same extent as he would. if such home guard held a responding rank in the police force to the one he holds for the time being in the Home Guards.</p> <p>(2) No prosecution shall he instituted against a home guard in respect of anything done or purporting to be done by him in the discharge of his duty as a home guard. except with the previous sanction of the District Magistrate having jurisdiction over the area in which the home guard was enrolled or in which the act was committed.</p>
<p>Period of service and discharge are defined as under:</p> <p>8. Every member of the Prantiya Rakshak Dal/Vikas Dal shall be required to serve the State Government for such period as may be prescribed. He shall thereafter be called up for duty at any time during a further period as may be prescribed. After the expiry of such further period the member shall be deemed to have been discharged from the Prantiya Rakshak Dal/Vikas Dal.</p>	<p>Liability for services is defined as under:</p> <p>11. (1) Subject to any rules made in this behalf, a home guard shall be bound to serve in any unit of the Home Guards to which he is. for the time being attached.</p> <p>(2) The initial period during which a home guard may be required to serve shall be three years from the date of his enrolment. This period may be extended with his consent recorded in the prescribed manner.</p> <p>(3) Every home guard shall be liable to serve, when called out in the prescribed manner, for duty in any part of the State. No home</p>

	<p>guard shall be required to render service outside the State unless he has given his consent in the prescribed manner for such service.</p> <p>(4) The home guards called out for duty may be paid such allowances as may be prescribed.</p> <p>(5) The home guards will ordinarily be called out to serve in the areas of their enrolment and only for part-time duty.</p>
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9. Section 9 of the The Uttar Pradesh Prantiya Rakshak Dal/Vikas Dal Act provides for the offences and has made it an offence if a person selected does not report for duty or neglects or refuse to obey the order or deserts his duty or contravenes any provision.

“9. Any member of the Prantiya Rakshal Dal/Vikas Dal who-

(a) fails to report himself when called up for duty under Section 5, or

(b) without sufficient excuse neglects or refuses to obey the orders of this superior officer or fails to discharge his functions as a member of the Prantiya Rakshak Dal/Vikas Dal while on duty, or

(c) deserts his duty or

(d) contravenes any provision of the Rles & Regulations made under this Act,

Shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

10. Section 13 of the Uttar Pradesh Home Guards Adhinyam is almost *pari materia* and provides for penalties, if the Home Guard fail to report for duty or deserts or refuses or neglects to obey the order.

Both the Acts are silent with regard to payment of remuneration/compensation for the duties rendered by the volunteers.

11. In the light of the similarities as pointed out above, it is clear that the volunteers are appointed by the State Government. The nature of functions are almost similar, the rigours of following the orders etc., are

similar. Thus, the submission of learned counsel that for all practical purposes they are similar and thus, should be paid the allowances which are similar and they claim parity with the Home Guards Jawans in respect of their employment.

12. The State Government on the other hand has filed a counter affidavit in Writ – A No.1527 of 2021, which is treated as a counter affidavit in all the cases. In Paras – 9 & 10 of the counter affidavit, the following has been submitted in rebuttal to the averments made by the petitioner:

“9. That the services of PRD personnel's are governed by PRD Act and Rules, 1948. The sanction of engagement of PRD personnel's are granted by the State government on the demand of district administration on the basis of available funds sanctioned. So far as the fixation of duty allowances of the PRD personnel's at par with the personnel's of home guards is concern, it is submitted that government of Uttar Pradesh has established two separate departments for Home Guards and Prantiya Rakshak Dal. Both the departments have separate acts and rules. Although the nature of work of both the departments are likely be similar but as the both the departments are different and government decide the rate of both the departments as per available funds sanctioned by the government. The government has recently increased the Duty Allowances from Rs.375 to Rs. 395/- per day of PRD personnel's vide government order dated 06.01.2022.

10. That government of UP has established two separate departments for Home Guards and Prantiya Rakshak Dal. Both the departments have separate acts and rules. Although the nature of work of both the departments are likely be similar but as the both the departments are different and the government has decided the Charge of both the departments as per available funds sanctioned by the government. The government has sanctioned Rs.395/- per day as allowances for the PRD personnel's vide government order dated 06.01.2022 and according the compensation and allowances of PRD personnel's have been given.”

13. Interestingly, in Para – 11, the State Government has stated as under:

“11. That in continuation of the same, the Directorate vide his No.239/Ek-129/PRD/2019 dated 09.07.2020, referring to his earlier letters regarding enhancement of Daily Compensation and allowances of PRD personnel's as Rs.500/- per day by annexing the order passed by this Hon'ble Court, requested to the government to take decision on this policy matter and take appropriate decision and in continuation of the same, the government vide letter No.975/fifty-YU.KA./2020-102(PVD)/1988 dated 17.09.2020 informed that vide 417/Fifty-YU.KA.-2019-102(PVD)/1988 dated 08.03.2019 the rate of compensation and allowances of PRD personnel's has been sanctioned and enchased to Rs.375/- per day from

Rs.250/- per day as such after 1 year 5 months of enhancement of daily allowances of PRD personnel's does not seems to be logical. Accordingly, by the letter of directorate dated 25.09.2020, this matter has been decided."

14. Thus, from the stand taken by the State Government as reflected in the counter affidavit and quoted herein above, the stand is that although the nature of working performed by the two are similar, since they are working under different departments, the payments are as per the availability of funds sanctioned by the government.

15. It is essential to note that this Court while deciding Writ – A No.47479 of 2015 was confronted with the issue raised by the soldiers of the Home Guards who was claiming parity in terms of pay scale as was being provided to the regular police personnel, and this Court delivered the judgment on 08.07.2016 following the judgment of the Hon'ble Supreme Court in the case of ***Grah Rakshak, Home Guards Welfare Association v. State of H.P. and Ors.; (2015) 6 SCC 247*** although the Court did not grant the reliefs as prayed, directions were issued to the State Government for grant of duty allowance at such rates, total of which 30 days (a month) comes to minimum of the pay to which the police personnel in the State Government is entitled in terms of the directions issued by the Supreme Court in the case of ***Grah Rakshak, Home Guards Welfare Association (supra)***.

16. The said judgment of this Court was challenged before the Supreme Court in SLP (C) No.226 of 2017, which was dismissed on 30.07.2019 and in pursuance to the direction so issued, the allowance payable to the Home Guards were increased.

17. In the present case, on the basis of the scheme of the two Acts as recorded above coupled with the stand taken by the State Government in the counter affidavit, there is no distinction in the nature of duties performed by the members of both the forces and thus, apparently, there is a violation of Article 14 of the Constitution of India insofar as it denies

the benefit of minimum of pay which is payable to the police personnel of the State Government.

18. In support of the contentions, the second argument of learned counsel for the petitioners that an amount of Rs.375/- is less than the minimum wages prescribed and thus, is in violation of Article 23 of the Constitution of India, he places reliance on a judgment of this Court in the case of *Madhyan Bhojan Rasooya Mazdoor Sangh Husainganj Lucknow v. Union of India & Ors.* decided on 08.02.2023 in *Writ – A No.3479 of 2015* wherein this Court had an occasion to consider the amounts being paid to the cooks employed by the State Government being less than the minimum wages, and directions were issued for payment to minimum wages prescribed to the persons who were working as cooks. This Court had also noticed the judgment of the Supreme Court in the case of *People's Union for Democratic Rights and Others v. Union of India and Others; (1982) 3 SCC 235* wherein the Supreme Court had analysed the scope of remuneration which was less than the minimum wages and they were held to be 'forced labour' within the scope of forced labour defined under Article 23 of the Constitution of India, and held as under:

“14. Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is “forced labour” that is labour or service which a person is forced to provide and “force” which would make such labour or service “forced labour” may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force” and if labour or service is

*compelled as a result of such “force”, it would be “forced labour”. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly “forced labour”. There is no reason why the word “forced” should be read in a narrow and restricted manner so as to be confined only to physical or legal “force” particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and everyone shall have the right to work, to education and to adequate means of livelihood. The Constitution-makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is not unoften that in a capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word “force” must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage. Of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is “forced labour” because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion. **We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be “forced labour” and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum wage was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23.***

19. In view of the statutory provisions, the stand taken by the State Government as noted above and the fact that the payments made as

remuneration are less than the minimum wages prescribed even for Class – IV employees, the action of the State Government is clearly arbitrary, the rights of the petitioners under Article 14 of the Constitution of India have been violated and the justification given by the State Government for not paying the remuneration equivalent to that being paid to the Home Guard Jawans is clearly arbitrary and illegal. In view thereof, the writ petitions deserve to be allowed and are accordingly *allowed*.

20. Directions are issued for recomputing the remuneration/allowances payable to the Jawans of Uttar Pradesh Prantiya Rakshak Dal at such rates, total of which 30 days (a month) comes to minimum of the pay to which a police personnel in the State Government is entitled as directed by the Supreme Court in the case of *Grah Rakshak, Home Guards Welfare Association (supra)*.

The State Government shall also pass orders for paying the emoluments/remunerations to the petitioners at a rate equivalent to which is being paid to the Home Guards from time to time.

The State Government shall pass requisite orders as directed above within a period of three months from today.

Order Date :- 03.08.2023

nishant

[Pankaj Bhatia, J.]