

GAHC010136752020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4267/2020

KAMAKHYA DAS AND 4 ORS

2: MD. IKRAM ALI

3: DEEPAK TIWARI

4: JITEN CHANDRA BARMAN

5: MIZANUR RAHMAN

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GHY-16

2:THE STATE OF ASSAM
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-06

3:THE ADDL. CHIEF SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-06

4:THE DIRECTOR GENERAL OF CIVIL DEFENCE AND COMMANDANT
GENERAL OF HOME GUARDS
ASSAM
BELTOLA
GHY-28

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-07

6:THE ADDL. DIRECTOR GENERAL OF POLICE (A)
ASSAM
GHY

7:THE STATE OF ASSAM
REP. BY ITS PRINCIPAL SECY. TO THE GOVT. OF ASSAM
FINANCE DEPTT.(ESTT-A)
DISPUR
GHY-06

8:THE ACCOUNTANT GENERAL
ASSAM
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A AND E)
ASSAM

MAIDAMGAON
BELTOLA
GHY-2

Advocate for the Petitioner : MR H GUPTA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

08.08.2022

Heard Mr. H. Gupta, learned counsel for the petitioner. Also heard Mr. R. Borpujari, learned counsel for the Finance Department and Mrs. S. Baruah, learned counsel for the respondent Nos. 1 to 6. Mr. A. Hassan, learned counsel appears for the respondent No. 8.

2. The petitioners case is that they are serving as Home Guards after being appointed under Section 6 (3) (a) of the Assam Home Guards Act, 1947. The petitioners are praying for enhancement of their duty allowance in terms of the judgment & order dated 11.03.2015 passed by the Apex Court in ***Grah Rakshak, Home Guards Welfare Association Vs. State of Himachal Pradesh & Ors.*** reported in ***(2018) 6 SCC 247.***

3. The petitioners' counsel submits that 23 States in India have already implemented the decision of the Apex Court in ***Grah Rakshak, Home Guards Welfare Association*** (supra) as on date. However, the State of Assam has not implemented the same.

4. Mr. Borpujari, learned counsel for the Finance Department submits that the Home (B) Department, Govt. of Assam had submitted a proposal regarding enhancement of duty allowance of Home Guards in light of the judgment of the Apex Court. As per the advice of the Finance (Budget) Department, Finance (EC-II) vide endorsement dated 03.07.2021, advised the Home (B) Department

to place the matter before the Cabinet for their approval. The Finance (EC-II) Department also requested the Home Department to reduce the strength of Home Guards, so that the proposal became revenue neutral. He submits that thereafter, the Home (B) Department re-submitted the proposal for enhancement of duty allowance of Home Guards, stating that the reduction of the deployment strength of Home Guards is not suggested at present, as the department is already deficient in man-power to handle day-to-day policing issues. He submits that the Finance (EC-II) Department, vide endorsement dated 05.02.2022, again requested the Home (B) Department to make the proposal revenue neutral, by reducing the number of Home Guards and consider raising the rates for Public Sector Undertaking deployment. He submits that till date, the Home (B) Department has not re-submitted the proposal for enhancement of duty allowance of Home Guards.

5. Ms. S. Baruah, learned counsel for the Home Department submits on the basis of the affidavit-in-opposition filed by the respondent No. 2, that several communications have been received from the Ministry of Home Affairs regarding implementation of the judgment of the Apex Court. She submits that the Government is taking necessary steps for enhancement of duty allowance of Home Guards in terms of the judgment of the Apex Court.

6. I have heard the learned counsels for the parties.

7. In the case of ***Grah Rakshak, Home Guards Welfare Association*** (supra), the Apex Court has held in paragraph No. 39 as follows:-

“However, taking into consideration the fact that Home Guards are used during the emergency and for other purposes and at the time of their duty they are empowered with the power of police personnel, we are of the view that the State Government should pay them the duty allowance at such rates, total of which 30 days (a month) comes to minimum of the pay to which the police personnel of the State are entitled. It is expected that the State Governments shall pass appropriate orders in terms of aforesaid observation on an early date,

preferably within three months.”

8. In the case of **Manipur Home Guards Employees Association, represented by its President Vs. State of Manipur & Ors.** reported in **(2020) SCC Online Mani 78** vide its judgment & order dated 07.12.2019, the Manipur High Court directed the State Government to pay the claim of the petitioner Association for grant of duty allowance to Home Guards, in terms of the direction issued by the Apex Court in **Grah Rakshak, Home Guards Welfare Association** (supra).

9. In view of the judgment of the Apex Court in **Grah Rakshak, Home Guards Welfare Association** (supra), the State Government is directed to pay the Home Guards duty allowance at such rates, total of which 30 days (a month) comes to the minimum pay to which the police personnel of the State are entitled to. The exercise should be completed within a period of 3 (three) months from the date of receipt of a certified copy of this order.

Writ petition is accordingly allowed.

JUDGE

Comparing Assistant