Before G.S Sandhawalia and Vikas Suri, JJ.

STATE OF PUNJAB AND OTHERS — *Appellants*

versus

SHINGARA SINGH AND OTHERS — *Respondents*

LPA No. 1088 of 2018 (O&M)

July 07, 2022

Constitution of India, Art. 14, 226, 227—Letter Patents Appeal—CWP dismissed—Present LPA dismissed—Delay and latches — Right of voluntary employees to be recalled— The persons were earlier employed as homeguards—They were only volunteers and not temporary or ad hoc or daily wagers—Held, Article 14 of the Constitution of India does not imply in the negative context and there is no negative equality and a wrong benefit cannot be allowed to multiply—There is no legal right of the petitioners to be recalled after a period of two decades—Even on merits they were not found fit to perform duties, they had absented on their own account and had been duly discharged.

Held, that the Home Guards and their entitlements and their right as such to claim recall specially after a period of over two decades. However, the said respondent has also passed an order in three cases as such considering the claim and rejecting the same on 31.05.2017 (Annexure R-2) which has apparently also not been challenged. Even otherwise, we are of the considered opinion that the said order has kept in mind the factum of the status of the writ petitioners as such and even on merits otherwise not found them fit as such to perform the duties of constabulary having been out of service for the last two decades. The public interest element has also been kept in mind and the fact that they had absented on their own account and duly discharged.

(Para 22)

Monica Chhibbar, Senior DAG, Punjab, *for the applicant/ appellants* (in LPA No. 1088, 1089, 1885, 1886, 1887 of 2018).

Pardeep Singh Mirpur, Advocate, *for the applicant/ appellants/petitioners* (in LPAs No. 1814, 1815, 1818 of 2019, CWPs No.33508, 33587, 33514, 33565, 33571, 33572, 33579, 33566 and 34587 of 2019).

J.S. Dhaliwal, Advocate, *for the applicant/ appellants*(in LPAs

No. 1567, 1571, 1573, 1599, 1624, 1556, 1673, 1754 and 1855 of 2019).

J.S. Khiva, Advocate, for the applicant/ respondents (in LPAs No. 1885 of 2018 to 1887 of 2018).

Puneet Kumar Bansal, Advocate, *for the petitioners* (in CWPs No. 12888, 21455, 21442 and 32987 of 2019).

Randeep Singh, Advocate (in CWP No. 672 of 2020) Mr. PPS Duggal, Advocate (in CWP No. 33866 of 2019) *for the petitioners*.

G.S. Lalli, Advocate, for respondent Nos.3 to 9 (in LPA No. 1088 of 2018) for respondent Nos.1 to 3 (in LPA No. 1089 of 2018).

G.S. SANDHAWALIA, J.

(1) The present judgment shall dispose of 31 cases, out of which,17 are the letters patent appeals i.e. LPA Nos. 1088, 1089, 1885, 1886 and 1887 of 2018 and LPA Nos. 1567, 1571, 1573, 1599, 1624, 1656, 1814, 1815, 1818, 1673, 1754 and 1855 of 2019 and 14 are the civil writ petitions i.e. CWP Nos. 34587, 21455, 33866, 33579, 33572, 33571, 33565, 33514, 33587, 33508, 32987, 21442, 12888 of 2019 and 672 of 2020.

(2) The present set of appeals arise out of the three different judgments passed by three different learned Single Judges. The relief has been granted vide judgment dated 23.02.2017 in CWP No. 23475 of 2015, Jarnail Singh vs. State of Punjab and others. Similarly, in CWP No. 22640 of 2011, Shingara Singh and others vs. State of Punjab and others dated 25.01.2018, the relief has been granted to the extent that the learned Single Judge has directed the State to consider the case of the petitioners in terms of cases of Shingara Singh and Paramjit Kumar, who had been recalled on duty as Home Guards Volunteers. The relief has been declined in CWP No.19229 of 2018, Joginder Singh and others vs. State of Punjab and others alongwith 17 other cases on 06.06.2019.

(3) The reasoning thus was on account of parity as such that the said directions had been issued. The contest by the State was on the ground that the writ petitioners were not permanent/temporary/*ad hoc/*daily wage employees but only volunteers. The subsistence allowance was being paid at Rs.300/- per day for the duty period. In

case somebody was absent for more than 6 days, he was called off from duty. The petition had been filed after a gap of 15 years and only because allowances being paid to the Home Guards had been doubled by the State, such representations had come forth and the petition was thus liable to be dismissed on the ground of delay and laches. The claim of the writ petitioners was not admissible and required no consideration, as they had been absent willfully and, therefore, at this stage, same could not be acted upon as the legal notice had also been replied. CWP No. 19229 of 2018 against which LPA No. 180 of 2020 had been filed, another learned Single Judge as such took a contrary view while dismissing as many as 18 writ petitions on 06.06.2019. The reasoning given as such for dismissal of the writ petitions was that the writ petitioners were discharged in the year 1992 and period of almost 27 years has elapsed since then and they were never inducted on regular basis. The re- engagement was of persons who had not absented during the period when Punjab had faced militancy and keeping in view the fact that Punjab was sharing international border with Pakistan. The judgment in CWP No. 23475 of 2015, ***Jarnail Singh*** *versus* ***State of Punjab and others,*** decided on 23.02.2017, was distinguished on the ground that the Punjab Home Guards Act, 1947 and the Punjab Home Guards Rules, 1963 have not been considered. Resultantly, we are faced with two contrary views on the same issue.

(4) Similarly, CWP Nos. 34587, 21455, 33866, 33579, 33572, 33571, 33565, 33514, 33587, 33508, 32987, 21442, 12888 of 2019 and 672 of 2020 are also placed before us wherein, relief is sought for re- employment as Punjab Home Guards. Reference can be made to one CWP No. 672 of 2020 wherein, the petitioner Mann Singh sought re-employment who had performed duty from 05.05.1992 to 03.01.1993 as per the certificate issued by the Commander, Training Centre, Punjab Home Guards, Bathinda (Annexure P-1). As per his own representation dated 19.12.2016 (Annexure P-6), he stated that he could not come back on duty on 03.01.1996 and was discharged being absent. Apparently, after a period of more than 23 years, the said representation was filed that he be given opportunity to serve on account of the other volunteers having joined duty. The State had opposed the said claim that he was absent from March, 1994 and performed duty only for a brief period and had been called off duty about 26 years earlier. Resultantly, the plea taken was that it was only a post of a volunteer and somebody who had deserted long back, could not as such either be fit to perform active duty nor it would be in public

interest to recall them at this stage. Certain persons whose names were continuing on the rolls and whose whereabouts were known were recalled on the demand of the FCI and, therefore, they were differently placed as such.

(5) A perusal of the pleadings in CWP No. 22640 of 2011, out of which LPA No. 1088 of 2018 has arisen, would go on to show that the prayer was for absorbing and re-employing the 9 writ petitioners as Home Guards Volunteers as they claimed that they have served for 1 year to 10 years from 1992 and also as Special Police Officers. Their services had been terminated without following proper procedure and without servingany notice. In the writ petition, it was averred that out of the 9 petitioners, 7had been employed from periods ranging from 1989 to 1993, till 1994 to 2005. The writ petition was silent regarding the details of the two of the petitioners. Averment was made that against sanctioned strength of 1200, only 240 Home Guards were working as per news item. A representation Annexure P-3 would go on to show that claim as such was regarding enlisting of Guards in F-Company No.2 Battalion in the year 1991 upto 1997 and the legal notice was dated 22.09.2011 (Annexure P-4), which was replied on 10.10.2011 (Annexure P-5) by the State on the ground that they had been recruited as Guards. On account of absence for more than 3 days, they had not been taken back on duty as per instructions of the Punjab Government and State Headquarters. The Guards had not been terminated and had been called off from duty.

(6) In the written statement filed by the State, period of absencewas pointed out and thereafter, after 6 days as per instructions, they were not to be called for duty and the writ petition had been filed after 15 years.

(7) Similarly, the pleadings in CWP No. 23467 of 2015, out of which LPA No. 1886 of 2018, State of Punjab and others vs. Jarnail Singh arises, would go on to show that identity card was issued to him on 14.08.1992, as per the DDR which was lodged on 16.08.1992 (Annexure P-1) and that he had lost the same. As per communication dated 24.12.2014 (Annexure P-2) would go on to show that he was appointed on 05.09.1990 with the Punjab Home Guard 72 Rural Company and had absented on 01.11.1993. Resultantly, he was discharged on 01.01.1994. He had served the legal notice on 02.12.2015 taking the plea that he had not been allowed to join and that in the year 2013, other guards had been reinstated who were similarly situated. While issuing directions for consideration in CWP

No. 5326 of 2015, the learned Single Judge had expressed the doubt regarding the issue of delay and limitation but directed that an order be passed assigning reasons. The rejection as such was on 04.08.2015 (Annexure P-6) while considering cases of several others including the writ petitioner. The reasoning aspect is as under:-

> "It is also pertinent to mention here that Punjab Home Guards is a volunteer institution, member of which are not permanent/temporary/ad-hoc working employees of Punjab Home Guard. It is also pertinent to mention here that the above four petitioners joined in department as a volunteer on different dates and they absented from their duty with own free will on different dates due to long absence after discharging the petitioners, the concerned District Commander joined new Guards on their place. There is no provision in the Government instructions for re-instating on duty to one discharged volunteer."

(8) The stand of the State as such was also that his name had been struck off due to is long absence and his case had been duly considered and a well reasoned speaking order had been passed. Qua the averments that some others had been called back, it was the stand that they were only called off from duty but their names were on the rolls whereas the petitioners stood discharged since 01.01.1994. The reasons as such for recalling them was of the requirement of the appellants/FCI which would also be apparent from the documents which have been filed by the petitioner himself that there was a demand from the Food Corporation of India (FCI).

(9) The order of the writ court was thereafter complied with while noting that there was no right as such to remain on continuous call out duty and they were not even found fit to perform constabulary duties and it was not in public interest keeping in mind that they were absent without any leave or sanction on their own will and had been discharged from the rolls of the department. The relevant portion of the rejection order passed by the Director General of Police-cum-Commandant General, Punjab Home Guard and Director Civil Defence, Punjab, Chandigarh reads thus:-

> "To comply with the afore-said directions of the Hon'ble Court to judge the physical fitness and mental alertness of Petitioners Jarnail Singh, Charanjit Singh and Balwinder Singh, the Standing Board comprising of three Gazetted Officers of the department conducted a basic physical

endurance test of aforesaid petitioners at Combined Training Institute of the Department at Sundran (S.A.S. Nagar) on dated 24.05.2017. These petitioners could not pass the minimum physical endurance standards.

Punjab Home Guard is a voluntary organization, organized under the Punjab Home Guards Act 1947. As per rules of the organization, after enrolling and training volunteers they are kept ready for call out duties as per requirement in the state. Therefore these volunteers can not claim as a matter of right to remain on continuous call out duty.

In view of the aforesaid facts, Petitioner Jarnail Singh, Chanranjit Singh and Balwinder Singh due to their high age and having been out of duty for 20/22 days, have not been found fit to perform strenuous constabulary duties. Besides law & order, jail and Bank duties, for election duties in other States, services of physically fit volunteers are demanded only. Therefore, it is not in public interest to recall these petitioners on duty, the concerned Guards absented from their duties without any leave/information with their own will. Due to this the names of concerned Guards have been discharged from the long rolls of the department.

In view of the above the claim of petitioners is rejected after due consideration."

(10) Counsel for the State has primarily placed reliance upon the judgment of the Apex Court in ***Grah Rakshak, Home Guards Welfare Association*** *versus* ***State of H.P. and others***[1], to submit thatit is a constitution of volunteer corps and Home Guards are not regular employees of the State. It is submitted that the Apex Court was considering the issue whether they were regular appointees and whether entitled for regularization or not and resultantly, the said observations had flowed and the only relief which had been granted was that duty allowances had to be paid at the minimum of the pay to which the police personnel of the State were entitled and no regularization can be done. It is accordingly submitted that the order directing recall on duty after a period between 15 to 20 yearsis not justified and it would not be in public interest to take them back on duty. Reference is made to

[1] (2015) 6 SCC 247

the order dated 31.05.2017 (Annexure R-2) passed to that extent that it would not be in public interest. It is accordingly submitted that merely on account of some representations being filed and directions being issued by this Court to decide the representations wouldnot revive a dead cause of action.

(11) Counsels for the Home Guards-writ petitioners have accordingly argued that they were only seeking parity with persons who have been recalled and, therefore, the orders of the learned Single Judge allowing the writ petitions could not be said to be suffering from any illegality which would warrant interference. Reliance was placed upon the judgment in ***Sengara Singh and others*** *versus* ***The State of Punjab and others***[2]**,** wherein, reinstatement had been directed of the Members of the Police Force.

(12) Keeping in view the above, the following two issues would arise for consideration:

> (i) As to whether the writ petitions were maintainable at the belated stage after 15 years, only on account of legal notices having been served and directions issued by this Court to consider the same and whether the claim stood barred by delay and laches?
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> (ii) That on account of certain persons being taken back or recalled would entitle the persons employed earlier as Home Guards to haveany indefeasible right as such to be recalled for duty?

(13) On the first issue, we are of the considered opinion that itwould be apparent that in large number of cases, directions have been issued to have a re-look on the issue for recall while even noting the fact that there was a delay and the Court was not commenting upon the same, which would be clear from the order dated 28.04.2015 (Annexure P-5) in CWP No. 5326 of 2015, relevant part of which is reproduced as under:-

> "That being so, and without expressing any opinion on merits, and particularly as regards the issue of delay/limitation, if any, arising in the matter, respondent No.2 is directed to consider and decide the claim of the petitioner as set out in his legal notice dated 2.2.2015 (Annexure P-4), strictly in accordance with law, within a

[2] (1983) 4 SCC 225

> period of three months from the receipt of certified copy of the order. Needless to assert, a comprehensive order shall be passed assigning reasons in support of the decision arrived at."

(14) The same was in pursuance of a legal notice which had been served on 02.02.2015 and apparently, Jarnail Singh who was serving as a Home Guard had been discharged w.e.f. 01.01.1994 being absent from 01.11.1993 vide order dated 24.12.1994 (Annexure P-2). He had been employed only on 05.09.1990. It is, thus, apparent that after 20 years, he served a legal notice and directions were issued to decide which claim was accordingly rejected on 04.08.2015 (Annexure P-6). The Apex Court in ***Government of India and another*** *versus* ***P. Venkates***[3] held that the recourse to dispose of representations was only leading to a litigant coming back before the Court and the staleness of the claim was revived and, therefore, the same was not approved. The Apex Court was dealing with the issue of compassionate appointment in the said case. The relevant portion in ***P. Venkatesh*** *(supra)* reads thus:-

> "8.The primary difficulty in accepting the line of submissions, which weighed with the High Court, and were reiterated on behalf of the respondent in these proceedings, is simply this: Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. The essence of the claim lies in the immediacy of the need. If the facts of the present case are seen, it is evident that even the first recourse to the Central Administrative Tribunal was in 2007, nearly eleven years after the death of the employee. In the meantime, the first set of representations had been rejected on 3 January 1997. The Tribunal, unfortunately, passed a succession of orders calling upon the appellants to consider and then re-consider the representations for compassionate appointment. After the Union Ministry of Information and Broadcasting rejected the representation on 13 November 2007, it was only in 2010 that the Tribunal was moved again, with the same result. These successive orders of Tribunal for re-consideration of the representation

[3] (2019) 2 SCT 173

> cannot obliterate the effect of the initial appointment over a decade after the death of the deceased employee. This 'dispose of the representation' mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee."

(15) A co-ordinate Bench, of which one of us was a member, G.S. Sandhawalia, J., had dismissed LPA No. 73 of 2021, Jagjit Singh vs. Stateof Punjab and another on 30.11.2021 wherein also, there was absence from 1994 after a service of less than 3 years. It had been noticed that the order under challenge passed by the Commandant General, Punjab Home Guard was dated 27.07.2020 whereby, the legal notice dated 06.11.2019 was being rejected in view of the orders passed by the writ Court in CWP No. 984 of 2020 on 17.03.2020. The same was dismissed on 30.11.2021 while also taking into account the judgment of the Apex Court in ***C. Jacob*** *versus* ***Director of Geology & Min. Indus. Est. and another***[4] that the cause of action does not get revived. The relevant portion of the judgment reads thus:-

> "6. Let us take the hypothetical case of an employee who is terminated from service in 1980. He does not challenge the termination. But nearly two decades later, say in the year 2000, he decides to challenge the termination. He is aware that any such challenge would be rejected at the threshold on the ground of delay (if the application is made before Tribunal) or on the ground of delay and laches (if a writ petition is filed before a High Court). Therefore, instead of challenging the termination, he gives a representation requesting that he may be taken back to service. Normally, there will be considerable delay in replying such representations relating to old matters. Taking

[4] (2008) 10 SCC 115

advantage of this position, the ex-employee files an application/writ petition before the Tribunal/High Court seeking a direction to the employer to consider and dispose of his representation. The Tribunals/High Courts routinely allow or dispose of suchapplications/petitions (many a time even without notice to the other side), without examining the matter on merits, with a direction to consider and dispose of the representation. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere direction to consider and dispose of the representation does not involve any `decision' on rights and obligations of parties. Little do they realize the consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex- employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to `consider'. If the representation is considered andrejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

7. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department. Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a fresh cause of action or revive a stale or dead claim.

8. When a direction is issued by a court/tribunal to

consider or deal with the representation, usually the directee (person directed) examines the matter on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of acknowledgment of a jural relationship' to give rise to a fresh cause of action.

9. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period asqualifying service for purpose of pension. That will be a travesty of justice. Where an employee unauthorizedly absents himself and suddenly appears after 20 years and demands that he should be taken back andapproaches court, the department naturally will not or may not have any record relating to the employee at that distance of time. In such cases, when the employer fails to produce the records of the enquiry and the order of dismissal/ removal, court cannot draw an adverse inference against the employer for not producing records, nor direct reinstatement with back-wages for 20 years, ignoring the cessation of service or the lucrative alternative employment of the employee. Misplaced sympathy in such matters will encourage indiscipline, lead to unjust enrichment of the employeeat fault and result in drain of public exchequer. Many a time there is also no application of mind as to the extent of financial burden, as a result of a routine order for back-wages."

(16) Reliance can also be placed upon the judgments of the Apex Court in this context that relief is not liable to be granted to one set of persons who are fence sitters and merely because one certain set of persons as such have approached the Court and have been granted relief within limitation and it would not revive the cause of action to the

others. The Apex Court in ***State of Uttar Pradesh and others*** *versus* ***Arvind Kumar Srivastava***[5]**,** has held as under:-

> "23. The legal principles which emerge from the appellants as well as the respondents, can be summed up as under:
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> (1) Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
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> (2) However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same andwoke up after long delay only because of thereason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered inthe case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismisstheir claim.
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> (3) However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularization and the like (see K.C.

[5] (2015) 1 SCC 347

> Sharma & Ors. v. Union of India (supra). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the saidjudgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.
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> 24. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above.
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> 25. For all the foregoing reasons, we allow the appeal and set aside the order of the High Court aswell as that of the Tribunal. There shall, however, be noorder as to costs."

(17) The said principles, thus, would squarely apply to the present litigation which has been initiated at a belated stage and both the learned Single Judges have failed to advert to this fact. It is also settled principle that Article 14 of the Constitution of India does not apply in the negative context and there is no negative equality and a wrong benefit cannot be allowed to multiply. Reliance can be placed upon judgment of the Apex Court in ***R. Muthukumar and others***

versus ***The Chairman and Managing Director, Tangedco and others***[6] wherein, it was noticed that certain set of persons were already in Court and a compromise was effected on the basis of which, claiming parity, other petitions had been filed. Therefore, while rejecting the said claim of parity, the SLP was dismissed where the benefit had not been granted and allowed where the benefit had been granted by setting aside the judgments of the Madras High Court.

(18) The judgment relied in ***Sengara Singh*** *(supra)* as such would not be applicable to the facts and circumstances since it was a case of dismissal of a large number of Members of the Punjab Police on account of an agitation which they had led and out of the 1100 Members, 1000 Members had been reinstated and criminal proceedings had also been withdrawn, but the balance had not been reinstated and resultantly, it was directed that they should be reinstated on the same conditions as others who had been dismissed but reinstated. The relevant para reads thus:-

> "12. Logically the appellants must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases. Accordingly, the appellants would be entitled to reinstatement in service. Therefore, both the appealssucceed and are allowed and the order of the High Court dismissing the writ petitions is quashed and set aside. The State of the Punjab is directed to reinstatethe appellants subject to the same conditions set out at annexure P-II subject to which the other dismissed personnel of the Police Force were reinstated. They should be reinstated as directed herein forthwith from today. Their services should be treated as continuous and the period between the date of the dismissal and thereinstatement shall be treated as leave if available and admissible or leave without pay in leave of any kind is not available. To the extent they are treated as on leave they should be paid leave salary. Respondents shall pay cost of the appeals in both appeals quantified at Rs. 2500/- in each case. Appeals allowed."

(19) Reliance upon the judgment of the Apex Court in ***Davinder Singh and others*** *versus* ***State of Punjab and others***[7], by

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[6] 2022 Live Law (SC) 140

[7] (2010) 13 SCC 88

counsels would also be of no help to them as it is a case where stigmatic orders were passed and the volunteers' services had been terminated on account of the fact that they were involved in the acts of indiscipline at Amritsar Railway Station while travelling in connection with election duty. It was in such circumstances it was held that no opportunity had been given to them and terminating services at this stage affected them and they had been working as Home Guards from the last 15 to 17 years. Relevant paras read thus:-

> "(31) In our considered view, even in matters of discharge, the authority concerned cannot act arbitrarily while discharging an employee. However, in the instant case, the appellants are being discharged from service for indiscipline. Therefore, as provided in proviso to rule 27 of the rules, the appellants should have been given a reasonable opportunity of showing cause against the action proposed to be taken against them. Admittedly, no such opportunity was given to them. Therefore, we are of the view that the action ofthe respondents is contrary to their own statutory rules and in violation of principles of natural justice.
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> (32)Even without going into the question whether the appellants are eligible for the protection under Article 311 of the Constitution, in our view, the respondents seem to have acted in an arbitrary manner by terminating the services of the appellants, who have been working as Home Guards for the last 15-17 years. They are all over-aged. They may find it difficult to find alternate employment. Therefore, in the facts andcircumstances of this case and in the interest of justice, we deem it proper to set aside the order of termination passed by the respondents dated 02.12.2004 and direct the respondents to reinstate the appellants as Home Guards without back wages."

(20) The Apex Court in ***State of Gujarat*** *versus* ***Akshay Amrit Lal Thakkar***[8]**,** was examining the issue of disengagement of the Home Guards. It was accordingly held that the services were as such honourary and no civil consequences were involved. A similar view was also taken in ***Jiban Krishna Modal and others*** *versus* ***State of***

[8] 2006 SCC (L&S) 290

West Bengaland others[9], wherein, also similar observations came and it was held that the organization of Home Guards is a voluntary organization and they could not be regularized in service. Reliance was placed upon the earlier view in ***State of Manipur*** *versus* ***Ksh. Moirangninthou Singh and others***[10], that it was a voluntary citizen force and the view taken by the Delhi High Court in ***Rajesh Mishra*** *versus* ***Government of NCT of Delhi***[11], was approved that there was no master servant relationship and they are not civil servants. The Division Bench of the Delhi High Court in the said case had come to the conclusion that Home Guards could not be said to be civil servants and applications could not be entertained under the Administrative TribunalsAct, 1985.

(21) The judgment in ***Grah Rakshak*** *(supra)* relied upon by the State discussed the status of the Home Guards as such by making reference to the necessary provisions and was dealing with Home Guards of Himachal Pradesh, Punjab and NCT of Delhi and resultantly, the following observations had flowed:-

> "In exercise of the power conferred by Section 9 Home Guards and Civil Defence (Class II) Service Rules, 1988" "The Punjab Home Guard and Civil Defence (Class I) Service Rules, 1988" were framed. Though the aforesaid rules are not applicable to the present cases it is necessary to notice the difference between the Punjab Home Guard Rules, 1963 and 1988 Rules.
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> In Appendix 'A' of Class II Service Rules, the totalstrength posts both permanent and temporary and the Regular scale of pay to which the officers are entitled have also been shown therein. Similarly, an Appendix to Class I Service Rules also total no. of permanent and temporary posts has been shown along with the scale of pay. No such strength of post and scale of pay have been shown for members of Home Guards who were guided by the Punjab Home Guard Rules, 1963.
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> From the Punjab Home Guards Act,1947 we find that the Act has been enacted to provide for the constitution of volunteers Corps and therefore we hold that the members of

[9] (2015) 12 SCC 74
[10] (2007) 10 SCC 544
[11] (2002) 4 SCT 249

the Home Guards of Punjab under the Punjab Home Guards Rules are volunteers and are not regular employees of the State.

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21. It is not the case of the State Government that enrollment/appointments of the Home Guards were backdoor engagement and illegal made in violation of Articles 14 and 16 of the Constitution of India. Therefore, the decision of this Court in Umadevi(3) is not applicable in the case of the appellants-Home Guards. Admittedly, there is no concept of wages. These volunteers are paid duty allowance and other allowances to which they are entitled. There is nothing on the record to suggest that they performed duties *throughout the year*.

On the other hand, it is the specific case of the State that as and when there is requirement they were called for duty and otherwise they remained in their homes. Therefore, in absence of any details about continuity of service, month to month basis or year to year basis, the duties and responsibilities performed by them throughout the year can neither be equated with that of police personnel.

22. In view of the discussion made above, no relief can be granted to the appellants either regularization of services or grant of regular appointments hence no interference is called for against the judgments passed by the Himachal Pradesh, Punjab and Delhi High Courts. 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 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.

23. The appeals are disposed of with the aforesaid observation. No costs."

(22) In such circumstances, we are of the considered opinion, by

answering the questions above that the writ petitions were reviving a dead cause which was burdened with delay and laches and were not liable to be entertained by the learned Single Judges. The view taken by the learned State of Punjab**,** decided on 06.06.2019, is a more acceptable view since there is no legal right as such of the writ petitioners whereby they could ask for consideration for being recalled as held by the Apex Court that they are volunteers and not regular employees of the State. In the absence of any such legal right, the learned Single Judges were not correct in issuing the necessary directions. As noticed above, the two learned Single Judges as such, while deciding the cases in Jarnail Singh and Shingara Singh, have not taken into consideration the status as such of the Home Guards and their entitlements and their right as such to claim recall specially after a period of over two decades. However, the said respondent has also passed an order in three cases as such considering the claim and rejecting the same on 31.05.2017 (Annexure R-2) which has apparently also not been challenged. Even otherwise, we are of the considered opinion that the said order has kept in mind the factum of the status of the writ petitioners as such and evenon merits otherwise not found them fit as such to perform the duties of constabulary having been out of service for the last two decades. The public interest element has also been kept in mind and the fact that they had absented on their own account and duly discharged.

(23) In such circumstances, we are of the considered opinion that the reasons given as such are well justified and, therefore, the writ petitions filed for similar relief are also not liable to be allowed.

(24) Accordingly, LPA Nos.1088, 1089, 1885, 1886 and 1887 of 2018 of the State are allowed and LPA Nos. 1567, 1571, 1573, 1599, 1624, 1656, 1814, 1815, 1818, 1673, 1754 and 1855 of 2019 of the writ petitioners stand dismissed and CWP Nos. 34587, 21455, 33866, 33579, 33572, 33571, 33565, 33514, 33587, 33508, 32987, 21442, 12888 of 2019 and 672 of 2020 stand dismissed.

Dr .Payel Mehta