



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 9072 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Approved for Reporting	Yes	No
	√	

**RAJESHBHAI MAHESHBHAI JANI & ORS.**

**Versus**

**STATE OF GUJARAT & ANR.**

Appearance:

MR UT MISHRA FOR MR HK THAKOR(6182) for Petitioner No.

1,2,3,4,5,6

MS DHRUTI PANDYA, AGP for the Respondent(s) No. 1,2

**CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

**Date : 03/03/2026**

**JUDGMENT**

1. Rule returnable forthwith. Ms.Dhruti Pandya, learned AGP, waives service of Rule for the State respondents.

1.1 With the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

2. The present petition is filed under Article 226 of the Constitution of India, seeking the following reliefs:

*“(A) This Hon'ble Court may kindly be pleased to admit and allow this petition;*

*(B) This Hon'ble Court may kindly be pleased to direct the respondents to treat the services of the petitioners upto 58*



*years of age and their services are required to be treated as the other Government employees working and further to start the pay up regular salary like basic DA and other allowances which are available to the petitioners as the Govt. employees are receiving with all consequential benefits and to pay up the arrears of their regular salary from the date of their appointment till the final outcome of this petition and further be pleased to quash and set aside the circular dated 16/7/2020 and to implement the circular dated 20/3/2020 and to implement the circular dated 11/9/1987 in toto.*

*(C) Pending admission, hearing and final disposal of this petition, this Hon'ble Court may kindly be pleased to direct the respondents to implement the circular dated 20/3/2020 relying upon which the judgment and order passed by the Hon'ble Supreme Court of India and further be pleased to stay the circular dated 16/7/2020 and to implement the circular dated 11/9/1987 and further be pleased that the petitioners may not be retrenched, terminated or not to disturb their conditions of services and to start pay up the salary regularly."*

3. Heard Mr.U.T.Mishra, learned advocate for the petitioners and Ms.Pandya, learned AGP appearing for the respondent-State.

### **SUBMISSIONS OF THE PETITIONERS :**

4. At the outset, Mr.Mishra, learned advocate for the petitioners, would be candid in his submission that, so far as the principal grievance of the petitioners raised in this petition is concerned, it is squarely covered by the decision of this Court in the case of ***Mukesh Arsibhal Karmur and others vs. State of Gujarat and others***, being ***Special Civil Application No. 17518 of 2019 and allied matters***, decided on 19.02.2026. Nonetheless, the duty allowance which is received by the petitioners, i.e., Rs. 450/-, is less than the minimum of the pay scale received by any feeder cadre



police personnel of respondent-State.

4.1 Mr. Mishra, learned advocate, has drawn the attention of this Court to the letter dated 20.03.2020 issued by the Ministry of Home Affairs, Government of India, placed on record of this case, wherein it has been clearly stated that, as per the decision of the Hon'ble Apex Court in **Grah Rakshak, Home Guards Welfare Association Vs. State of Himachal Pradesh and Others - (2015) 6 SCC 247**, the duty allowance of Home Guards is required to be increased to the minimum pay (basic pay + grade pay + DA + washing allowance) to which police personnel are entitled. All States have been requested to take necessary and immediate action to implement the aforesaid judgment of the Hon'ble Apex Court latest by April 30, 2020.

4.2 Mr. Mishra, learned advocate for the petitioners, would submit that the daily allowance was increased from Rs.300/- to Rs. 450/- by the State vide its Resolution dated 02.11.2022, which does not even match with the minimum of the pay scale as aforesaid. It is submitted that the State is required to abide by the directions issued by the Hon'ble Apex Court and directives issued by the Government of India; and in law, it is incumbent upon the State to pay daily allowance which would meet with the minimum of the pay scale.

4.3 By making the above submissions, Mr. Mishra, learned advocate for the petitioners urge this Court to allow the present petition.



## **SUBMISSIONS OF THE RESPONDENTS :**

5. *Per contra*, Ms. Dhruvi Pandya, learned AGP, would state that initially all Home Guards were receiving daily allowance of Rs.200/-, which was increased in the year 2017 to Rs.300/-, and later on, vide Resolution dated 02.11.2022, increased to Rs. 450/-. The basis of granting such daily allowance would be on the basis of the minimum of the pay scale prevailing at the relevant point of time.

5.1 Learned AGP has cited one letter dated 12.04.2018 issued by the Office of the Director General, Civil Defence and Home Guards, State of Gujarat, written to the Additional Chief Secretary, Home Department, State of Gujarat, wherein a request was made to increase the daily allowance from Rs.300/- and the reference of the minimum of the pay scale as per the 7th Pay Commission, given to Police Constables, is referred to. Accordingly, the State has increased the daily allowance to Rs. 450/ vide its said resolution dated 02.11.2022.

5.2 Ms.Pandya, learned AGP, would submit that, apart from granting the said daily allowance, the State has decided to give other benefits like medical facilities, support to Home Guards in case of exigency including marriage and has also created a fund in case any Home Guard dies. The State has also increased messing allowance from Rs.100/- to Rs.200/- vide its Resolution dated 17.09.2024; thereby, every Home Guard will receive Rs.450/- daily allowance plus Rs.200/-



messing allowance, in all Rs. 650/-.

5.3 Ms. Pandya, learned AGP, would further submit that the State was in receipt of the letter dated 24.01.2024 issued by the Home Department, Government of India, wherein it has been stated that the Union of India has filed a review petition before the Hon'ble Apex Court against its aforesaid decision dated 11.03.2015 and its listing was awaited. Thus, the submission of the petitioners is ill founded and this Court may not entertain the present petition.

5.4 Ms. Pandya, learned AGP, would further submit that the service of a Home Guard is voluntary; thereby, they can engage themselves in any other activity. Unlike Police personnel whose services are available 24 hours a day, all seven days a week, the services of Home Guards are required as and when necessary. Therefore, they cannot be allowed to claim minimum of pay scale as prayed for.

5.5 By making the above submissions, Ms.Pandya, learned AGP would urge this Court to dismiss the present petition.

5.6 No other or further submissions have been made by the learned advocates for the respective parties. The letters and resolutions which are referred by the learned AGP during the course of the hearing are taken on record. Its copy is also given to Mr. Mishra, learned advocate for petitioners.



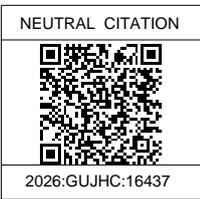
## **ANALYSIS:**

6. Having heard the learned advocates for the respective parties and upon appreciating all the submissions so canvassed by respective learned advocates as recorded hereinabove, I would like to first observe that the Hon'ble Apex Court, vide its decision in the case of **Grahak Rakshak, Home Guards Welfare Association (supra)**, has issued the following directions:

*“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.**”*

(emphasis supplied)

7. Apropos the aforesaid directions issued by the Hon'ble Apex Court, the Director General, FSCD & HG, Ministry of Home Affairs, Government of India, vide its letter dated 20.03.2020, requested all States to take necessary and immediate action to implement the aforesaid judgment of the Hon'ble Apex Court latest by April 30, 2020. The said communication dated 20.03.2020 is placed on record by the petitioner (at pages 13 and 14). As per the aforesaid communication, it has been clearly observed that, to



implement the order of the Hon'ble Apex Court, it is required to increase the duty allowance of Home Guards to the minimum pay (basic pay + grade pay + DA + washing allowance) to which police personnel are entitled.

8. It has been brought to the notice of this Court that, vide Resolution dated 02.11.2022, the State has increased the daily allowance from Rs.300/- to Rs. 450/-. The basis of the increase of such allowance appears to be the communication dated 12.04.2018 issued from the Office of the Director General, Civil Defence and Home Guards, Gujarat State, to the Additional Chief Secretary, Home Department, State of Gujarat, Gandhinagar. It appears that in the said communication, the Director General has taken note of the minimum of the pay received by Police Constables of the State and as can be seen from the said letter, the minimum daily salary of police personnel would be Rs.631/- (in year 2018). Even while arriving at such a figure, the Director General appears to have taken into account only basic salary, DA and washing allowance, which were directed to be considered by Hon'ble Apex Court in turn by the Government of India in its aforesaid letter. After taking into account the said fact, the State thought it fit to increase the daily allowance from Rs.300/- to Rs.450/- only that too on 02.11.2022.

9. So far as the aspect of the increase in messing allowance from Rs.100/- to Rs. 200/- is concerned, the learned AGP is not in a position to show that along with Rs.450/-, the Home Guard is receiving daily Rs.200/- as messing allowance. Mr.



Mishra, learned advocate for the petitioners, under the instructions of his client, also makes a statement that such allowance is not received along with the daily allowance of Rs.450/-.

10. Be that as it may, the State cannot disregard the directives issued by the Government of India or show disrespect for the directions issued by the Hon'ble Apex Court unless they are modified by the Hon'ble Apex Court itself. In my view, the State is required to increase the daily allowance from Rs.450/- to an amount which would match with the minimum of the pay which Police Personnel are currently entitled to and or received by them. Upon being asked, the learned AGP, under instructions from her officer, stated that currently the minimum of the pay available to any Police Constable is in the range from Rs.21,000/- to Rs.25,000/- per month. If it is so, the Home Guard is receiving a lower daily allowance and by no means can the State ignore such a vital aspect.

11. It may be true that the State is providing some other benefits and relief to Home Guards, including death compensation, but that would not mean that the State should exploit the services of the Home Guards by paying a lower daily allowance.

12. At this stage, it would be pertinent to note that by the letter dated 24.01.2024 issued by the Home Secretary, Government of India, all States were informed that the



Government has preferred a review petition against the aforesaid decision of the Hon'ble Apex Court. Upon inquiry and checking the status of the said review petition, it has been informed by the learned AGP that the review petition is already dismissed. Yet, the learned AGP, under the instructions of her officer, would state that the State of Gujarat is contemplating to file an independent review petition. According to my view, once the review petition filed by the Union of India was dismissed by the Hon'ble Apex Court, there was no cogent reason available to the State not to increase the daily allowance of Home Guards from Rs.450/- to a respectable amount which would match with the minimum of the pay of Police personnel; thereby, the directions issued by the Hon'ble Apex Court, followed by the Union of India, can be complied with. Such an

13. Learned AGP, under the instruction, informed this Court that and till the time, its review petition decided by the Hon'ble Apex Court, the State would not like to reconsider to increase the daily allowance of the Home Guards. This is nothing but a tyranny of the State. As such, an adamant approach on the part of the State not even ready to review the daily allowance of Home Guards is nothing but an arbitrariness on part of the State who otherwise considered as 'model employer'. It would be apt to refer and to rely upon the decision of Hon'ble Apex Court in a case of ***Union of India Vs. International Trading Company*** reported in **(2003) 5 SCC 437**, wherein held thus:



**“15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. **The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play.** Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. **The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined.** A question whether the impugned action is arbitrary or not is to be ultimately answered on the facts and circumstances of a given case. **A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.****

**16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary.** Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.”

*(Emphasis supplied)*

14. So far as the submission of the learned AGP that the service of a Home Guard is voluntary, unlike the services tendered by Police personnel, is concerned, such argument would not deter this Court from holding that, when the Hon’ble Apex Court has already issued said direction, such an argument cannot be appreciated by this Court.

15. Thus, the upshot of the foregoing observations, discussion, and reasons, the stance of the State not ready to increase daily allowance of Home Guards is nothing but an arbitrary decision which violates Article 14 of the Constitution



of India. This Court is not all impressed with any submission of learned AGP and cannot not allow the State to disrespect the direction issued by Hon'ble Apex Court following by directives issued by the Government of India.

16. In view of the aforesaid, the respondent-State is hereby directed to increase the daily allowance of Home Guards from Rs.450/- to the minimum of the pay received by Police personnel of the respondent-State as on date. Such decision shall be taken by the competent authority of the State within a period of one month from the date of receipt of a copy of this order and appropriate order/resolution may be passed by the State. While passing such order/resolution, the State authorities must keep in mind the direction issued by Hon'ble Apex Court, as aforesaid and accordingly fixed daily allowance.

17. In view of the foregoing conclusions, the present petition is partly allowed to the aforesaid extent. Rule is made absolute, accordingly. There shall be no order as to costs.

18. Direct service is permitted.

GAURAV J THAKER

**(MAULIK J. SHELAT, J)**