

Court No. - 49**Reserved**
A.F.R.**Case :-** WRIT - A No. - 18956 of 2022**Petitioner :-** Lavkush Tiwari And 1486 Others**Respondent :-** The State Of U.P. And 2 Others**Counsel for Petitioner :-** Aditya Prakash Verma, Shailesh Verma**Counsel for Respondent :-** C.S.C.

connected with

Case :- WRIT - A No. - 5771 of 2023**Petitioner :-** Pappu And 30 Others**Respondent :-** State Of U.P. And 4 Others**Counsel for Petitioner :-** Shiv Chand Yadav, Shyam Lal**Counsel for Respondent :-** C.S.C.**Hon'ble J.J. Munir, J.**

1. This judgment will decide the present writ petition and connected Writ-A No.5771 of 2023. Since both the petitions involve common questions of fact and law, the facts and the case of parties shall be noticed from Writ-A No.18956 of 2022, which shall be treated as the leading case.

2. The petitioners are Village Policemen, *Chowkidars* or *Gram Prahari*, variously called from time to time, but decidedly appointed to this office of some antiquity under the North-Western Provinces Village and Road Police Act, 1873 (Act No. XVI of 1873) (for short, 'the Act of 1873') and since repealed by the Repealing and Amending (Second) Act, 2017 (Act No.4 of 2018) (for short, 'the Amending Act of 2017'). The petitioners are essentially Village Policemen, tracing their origin to a time when the modern police network had yet to gain foothold in the wee days of the British Colonial Government. At that time also, the Act of 1873 contemplated the position of the 'Village Policemen' and the 'Road Policemen' as extended arms of the

regular police establishment in the remote villages, nooks and corners of the State, then called the North-Western Provinces.

3. It appears that the Village Policemen served an important role in the day that this position was created and for a long time thereafter. But, with the march of time, particularly, post independence, big strides in the organization and establishment of the modern police system were made. To add to it, were the great technological advancements in the systems of communication, quick transport and surveillance. All these factors put together, it seems, have made the position of the Village Policemen or the *Gram Prahari*, as they are now called, more or less rudimentary. Nevertheless, the post has been retained and there are incumbents, who have some duties to perform under the law.

4. The petitioners in the leading case are 1487 in number, and those in the connected matter, 31. Parties in the leading petition have exchanged affidavits. The leading case was admitted to hearing on 27.11.2024, which proceeded forthwith. The connected matter too was heard on 27.11.2024, along with the leading case. Judgment was reserved in both matters.

5. Heard Mr. Aditya Prakash Verma, learned counsel for the petitioners and Mr. P.K. Giri, learned Additional Advocate General assisted by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of the State.

6. The question involved here is if the Village Policemen are entitled to the grant of minimum pay, to which, the Policemen are entitled in the regular establishment of the State of Uttar Pradesh. It is the petitioners' case that they are working as Village Policemen or *Gram Prahari* under the State Government

for decades. It is illustratively said that petitioner No.2 is working since the year 1987, i.e., almost 37 years. They, therefore, claim that a *mandamus* be issued to the respondents to grant them minimum wages applicable to police personnel serving in the State of U.P. in the regular establishment. The petitioners receive honourarium for the services rendered by them. They say that the petitioners' work as Village Policemen or *Gram Prahari* has been defined under Sections 29 to 38 of Chapter IV of the Oudh Laws Act, 1876 (Act No. XVIII of 1876) (for short, 'the Act of 1876') and Paragraphs 89 to 92 of Chapter IX of the Uttar Pradesh Police Regulations. These Regulations also provide punishment for any irregularities committed by the Village Policemen.

7. The petitioners are presently posted as Village Police/*Gram Prahari* under the respondents and working since a long time. Their work is of a regular nature. Therefore, they are entitled to the minimum pay scale payable to the policemen in the State of U.P. in the regular establishment on principles enshrined under Articles 14 and 21 of the Constitution. The petitioners were earlier paid a sum of Rs.1500/- per month, but *vide* order dated 08.03.2019, the remuneration has been enhanced to Rs.2500/- per month. This is a very meagre amount, according to the petitioners, and certainly by no means, enough to sustain them in the present day economy. The State is exploiting the petitioners by all means, whereas the petitioners are discharging their duties faithfully and regularly.

8. The petitioners represented their cause from time to time since the year 2019 before the respondents, raising a grievance that they are entitled to a minimum pay scale in the regular cadre with better service facilities. On these requests, in

whichever way these landed before the State Law Commission, led the Law Commission to consider all issues raised. After examining the matter, the Law Commission submitted their recommendations on 03.12.2021 to the State Government. More than three years and a half have passed, since the Law Commission made their recommendations, but these have not been implemented or even proceeded with by the Government for implementation in the near future.

9. It is then pleaded on behalf of the petitioners that similarly placed Village Peon (Gram Chowkidar) in the States of Jharkhand and Bihar have been granted their due benefits *vide* notifications dated 07.04.2015 and 31.10.2016, where the Village Chowkidar has been given the status of a Class-IV employee in the service of the State. They have been provided the pay band of Rs.5200 – 20,200/- plus grade pay of Rs.1800/-. The benefit was extended retrospectively from the year 2006. There is also parity sought to be drawn by the petitioners from the case of Home Guards. They were also retained on similar tenure and meagre remuneration. However, in view of the decision of the Supreme Court in **Home Guards Welfare Association v. State of Himachal Pradesh and others, (2015) 6 SCC 247**, the petitioners urge that they are entitled to a remuneration for all the 30 days of the month, which would work out to the minimum pay, that is paid to police personnel of the State.

10. To support the same right on analogy of the entitlement of Home Guards, the petitioners rely on the decision of a learned Judge of this Court in **Ram Nath Gupta (Home Guard No. 0384) and others v. State of U.P. and others, 2016 (7) ADJ 453**. This judgment was appealed to the Division Bench, which affirmed it in **Special Appeal Defective No.735 of 2016**,

decided on 06.12.2016, with the slight modification that the words 'Police Constable' were substituted by the words 'Police Personnel'. The judgment of the Division Bench in **Special Appeal Defective No. 735 of 2016** was challenged by the State by means of SLP (C) No.2264 of 2017, but the Supreme Court dismissed the SLP with a direction to provide all consequential benefits. A clarification was nevertheless made that there is no order enabling the Home Guard to claim back-wages in the minimum pay scale prior to the High Court judgment. The State was directed to pass orders in compliance within eight weeks.

11. The petitioners seek to draw parity from the case of the Home Guards. They also seek to draw parity from the case of cooks, that was considered by this Court in **Chandrawati Devi v. State of U.P. and others, 2021 (1) ADJ 59**, where cooks, working under the mid-day-meal scheme in schools, were being remunerated at the rate of Rs.1000/- per month. Similar parity is drawn from the case of **Sabha Shanker Dube v. Divisional Forest Officer and others, (2019) 12 SCC 297**, which related to daily rated workers in Group-D posts employed with the Forest Department of the State of U.P. These employees, who were remunerated on fixed wages per month, were ordered to be paid the minimum of the pay-scale applicable to the regular employees, working on the same post. The petitioners' case is that the work and duties of the Village Policemen, under the Act of 1873, and presently governed by the Uttar Pradesh Police Regulations, clearly provide that Village Policemen are associates of the Police. The nature of their work is defined as vigilance. They are said to be the third eye of the Police Department. The petitioners say that they are continuously discharging their duties, but the State is discriminating against

them by not paying them the minimum wages, as prescribed under the minimum pay scale, if not by anything else, worked out in accordance with the Minimum Wages Act, 1948. It is also the petitioners' case that taking work from the petitioners on the meagre sum of Rs.2500/- per *ensem* amounts to the taking of *begar* prohibited under Article 23 of the Constitution, apart from discrimination, that is brought about in violation of Article 14 of the Constitution.

12. It is argued by Mr. Aditya Prakash Verma, learned Counsel for the petitioners that under the provisions of Paragraph 96 of the U.P. Police Regulations, the appointment of the Village Policemen or *Gram Prahari*, like the petitioners, is made by the District Magistrate under Section 3 to 6 of the Act of 1873 or under Sections 29 to 32 of the Act of 1876. He submits that the stand of the respondents is trite that the Act of 1873 has been repealed by the Amending Act of 2017, but the saving clause in Section 4 of the Amending Act, 2017 protects the office or appointments made before the repeal. In consequence, appointments of *Gram Prahari* made earlier when the Act of 1873 was in force, would continue to remain valid. It is then argued that the provisions of the Act of 1876 are still applicable and fresh appointments regularly being made under Sections 29 to 32 of the Act last mentioned. A perusal of the scheme of appointment, as it stood under Sections 3 to 6 of the Act of 1873, and, as it currently stands, under Sections 29 to 32 of the Act of 1876, clearly shows that the power of appointment is with the State Government, which, according to Paragraph 96 of the U.P. Police Regulations, is exercised by the District Magistrate. It is urged that even if it were the State Government's case that persons, who could make a nomination under the Act of 1873, do not exist in the current socio-

economic circumstances, the fact that the Act gives exclusive authority to the State Government, in default of nomination, as envisaged under Section 32 of the Act of 1876, to appoint a person after due inquiry into his age, character and ability, renders the submission of the State Government one without substance.

13. As regards the Rules governing service conditions of the petitioners, the power to frame these was delegated to the State Government, according to the learned Counsel for the petitioners, under Section 39 of the Act of 1876, but till date, no service rules have been made by the Government. It is then said that insofar as payment of wages to the petitioners is concerned, the Village Policemen or the *Gram Prahari* were remunerated at the rate of Rs.1500/- *per mensem*, but by an order dated 08.03.2019 issued by the Principal Secretary, Department of Home, Government of U.P., Lucknow, the remuneration has been enhanced to Rs.2500/- per month along with certain other facilities, detailed in the aforesaid Government Order, to which we would make allusion during the course of this judgment.

14. It is then urged on behalf of the petitioners that the term used in the Government Order dated 08.03.2019 is '*Mandeya*', which translates to honourarium, but the remuneration paid to a Village Policemen or *Gram Prahari*, mentioned in Paragraph 91 of the U.P. Police Regulations, is 'Pay'; not 'honourarium'. It is next pointed out that if in the discharge of functions by the Village Policeman any misconduct is committed, affecting his service under Section 10 of the Act of 1873 or Section 73 of the Act of 1876, power is conferred upon the District Magistrate to dismiss him. The Village Policemen are also liable to imprisonment and/ or fine upon conviction by a Magistrate

under Section 11 of the Act of 1873 or Section 37 of the Act of 1876.

15. The next point, that is highlighted by Mr. Verma, learned Counsel for the petitioners, is that the duties of the petitioners have been defined in Paragraphs 89 and 91 of the U.P. Police Regulations and the same are traceable to Section 34 of the Act of 1876 for the present, and earlier, to Section 8 of the Act of 1873 before its repeal. Paragraph 89 of the U.P. Police Regulations, it is argued, provides that the chief duty of a Village Policemen is to watch and ward the village, of which he is in-charge. It is submitted that when this provision is read with Section 34 of the Act of 1876, it is clearly established that the duties of the Village Policemen or *Gram Prahari* are similar, if not identical to the duties of Police Officers as provided under Section 23 of the U.P. Police Act, 1861.

16. The learned Counsel for the petitioners emphasizes that another set of duties, that arise for the Village Policemen are carried in Paragraph 91 of the U.P. Police Regulations, wherein it is provided that it would also be their duty to report birth and death of people in their villages and for the purpose, they are required to report and attend at their police station twice a month. It is said with much emphasis by the learned Counsel for the petitioners that the Act of 1873, as well as the Act of 1876, clothe the Village Policemen or *Gram Prahari* with the power to arrest individuals in accordance with the provisions of those Acts. In order to establish that the petitioners are indeed policemen, learned Counsel for the petitioners has harped upon to the authority of a Full Bench of this Court in **Deokinandan v. Emperor Sulaiman, AIR 1936 All 753**, where it was held by the Full Bench that Village Policemen would be considered police officers for the purpose of Section 25 of the Indian

Evidence Act, 1872. He says that it was remarked there that these Village Policemen are members of the Police Force under Paragraph 373 of the U.P. Police Regulations, as it stood back in the day with the *pari materia* provision being Paragraph 396 of the U.P. Police Regulations.

17. It is next submitted that a moreful survey of duties of the Village Policemen would necessitate a look at Paragraphs 245, 257, 260, 261, 267 and 273, amongst others, of the U.P. Police Regulations. It is urged that a very interesting point, as the learned Counsel for the petitioners would put it, common to all these provisions, is the fact that duties assigned to the Village Policemen for their villages, are the same as those assigned to the Beat Constable in the Police Establishment in urban areas. It is emphasized that these duties further strengthen the petitioners' case about them discharging police functions. It is also revealed that all these duties have an essence of time and, therefore, quick judgment.

18. The argument is that these duties of a Village Policeman all show that the State's submission that the petitioners work only two days a month is ill-founded. The petitioners continuously work shoulder to shoulder along with the Police Forces to ensure maintenance of law and order. The attention of the Court is invited to the duty charts attached at Page No.35 onwards in the rejoinder affidavit, specially the one at Page No.39, which provides for a month long duty description. It is also argued that in view of the provisions of Paragraph 396 of the U.P. Police Regulations, the petitioners are clearly part of the Police Force and Section 47 of the Police Act, 1861 prescribes that the Village Policemen would be under the authority of the District Superintendent of Police, subject to the general control of the Magistrate of the District. It is also pointed

out that orders have been issued to the petitioners by the Station House Officer, calling them to work on specific occasions at specified places. In this regard, our attention has been drawn to Page No.35 and onwards of the rejoinder affidavit.

19. It is argued that the case of the State Government pleaded in paragraph No.16 of the Additional Chief Secretary's personal affidavit, that the Government are of opinion that the petitioners are provided adequate honourarium in the sum of Rs.2500/-, because they work only two days a month, is factually and legally flawed. The reason for the fallacy in the State's submission, according to the petitioners, is that Paragraph 91 of the U.P. Police Regulations, which provides for reporting of births and deaths in the village requires the petitioners to attend at the police station twice a month, which is one of their secondary duties. Their primary duty is one arising from Paragraph 89 of the U.P. Police Regulations and Section 34 of the Act of 1876 or Section 8 of the Act of 1873. The duties under the aforesaid paragraph are onerous and referable to sovereign functions of the State, which cannot possibly be discharged, working two days in a month. It requires continuous detection of crime and movement of habitual offenders, besides immediate intimation of the same to higher officials. It is also said that the entire intelligence of the Police Department is dependent on the establishment of the Village Policemen. It is next said that the honourarium or pay of Rs.2500/- a month, paid to the petitioners, cannot be considered enough to keep their body and soul together, as also of their family.

20. There is a reference then made by the learned Counsel for the petitioners to the latest notification dated 16.05.2024, prescribing the minimum wages issued under the Minimum

Wages Act, 1948. There Rs.410/- per day is mandated for unskilled workers, Rs.451/- for semi-skilled and Rs.505/- for skilled workers. The employers are duty bound to comply with the rates of wages carried in the notification. The State Government, which is considered to be a model employer, as the petitioners say, find it convenient to pay a measly sum of Rs.83.30 per day (the daily rate of wage worked out on the pay of Rs.2500/- per month).

21. Learned Counsel for the petitioners has relied upon the decision of the Supreme Court in **People's Union for Democratic Rights and others v. Union of India and others, (1982) 3 SCC 235**, calling our attention to paragraph Nos.12 to 15 of the report. He has particularly referred to **Chandrawati Devi (supra)**. These authorities have been relied upon by the petitioners to support their right to minimum wages. Reliance is also placed upon the principle laid down by the Supreme Court in **State of Punjab and others v. Jagjit Singh and others, (2017) 1 SCC 148**, where also, the right to receive minimum wages, according to the petitioners, has been regarded as a constitutional mandate. It is, in the last, submitted that the petitioners' case is on a better footing than that of the Home Guards, since the latter are not members of the Police Force and employed only to discharge duties, when called out to do so. Nevertheless, the Court has granted them protection in **Ram Nath Gupta (supra)** and **Home Guards Welfare Association (supra)**, entitling them to remuneration for all the 30 days a month and *a fortiori* the minimum pay received by police personnel of the State.

22. In the counter affidavit filed on behalf of the Additional Chief Secretary (Home), which is his personal affidavit, the stand is that the Village Policemen or *Gram Prahari* are being

paid honourarium and given other facilities as per rules prescribed by the Government in terms of the Government Order dated 08.03.2019 and in Paragraphs 90 and 91 of Chapter IX of the U.P. Police Regulations. It is averred that the petitioners are being provided adequate honourarium and other facilities in proportion to the work done by them. They are required to work only two days in a month and free to do any other work for gain, that is to say, agriculture or local business.

23. A similar stand has been taken by the Director General of Police in the counter affidavit filed by him. There is a counter affidavit filed on behalf of respondent No.3, which also takes the same stand as the Additional Chief Secretary.

24. Mr. P.K. Giri, learned Additional Advocate General, assisted by Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel, submits that the Village Policemen or *Gram Prahari* are not, in any way, members of the Police Force of the State. He has called attention of the Court to the definition of 'Police' under Section 1 of the Police Act, 1861 (5 of 1861), where it is defined in the following terms:

"the word "Police" shall include all persons who shall be enrolled under this Act;"

25. The learned Additional Advocate General has next invited attention to Section 2 of the Police Act, 1861, which provides the constitution of the Police Force as follows:

"2. Constitution of the force:- The entire police-establishment under a State Government shall, for the purposes of this Act, be deemed to be one police-force and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act, the pay and all other conditions of service of members of

the subordinate ranks of any police-force shall be such as may be determined by the State Government."

26. Mr. Giri submits that the functions performed by Village Policemen are in the nature of an auxiliary role, assisting the local administration with village level surveillance. Their duties are limited to reporting twice a month – once for submitting their reports and the second for collecting their honourarium. By no means, the responsibilities of the Village Policemen are equivalent to those in the regular establishment of the Police. It is pointed out that the honourarium for the Village Policemen was initially fixed at Rs.1500/- per *mensem vide* Government Order No. 1393P/Ch-Pu-6-12-1CM/12 dated 24.09.2012. It was subsequently enhanced to Rs.2500/- *per mensem vide* Government Order No. 45/2019/490P/Ch-Pu-6-2019-01-CM/2012 dated 08.03.2019. This honourarium is proportionate to the limited duties and responsibilities, that fall on the shoulders of the petitioners. The Government Order dated 08.03.2019, it is submitted, has not been challenged in Court. It is acknowledged that the Law Commission headed by Mr. Justice A.N. Mittal, a former Judge of this Court, was asked to recommend on matters, relating to appointment, service conditions, responsibilities and social security etc., for the Village Policemen in the State of U.P. In due course, the Law Commission have submitted their recommendations to the Government. The recommendations are still under consideration of the Government and no rights can be founded on these.

27. Mr. Giri has relied on the authority of the Supreme Court in **State of Kerala v. Naveena Prabhu, (2009) 3 SCC 649** to say that the Supreme Court has held there that Courts should exercise restraint in issuing directions relating to financial and

policy matters, as these essentially fall within the domain of the executive. To the same end, the learned Additional Advocate General has relied on the authority of the Supreme Court in **State of Maharashtra v. Bhagwan, (2022) 4 SCC 193**. It is emphasized by the learned Additional Advocate General that the work of Village Policemen is limited to two days a month, as already said, and they are free to engage in other occupations, such as agriculture or business. The honourarium provided to them is adequate for the duties they perform. He submits that the petitioners' demand for regularization and minimum wages is utterly untenable.

28. We have carefully considered the rival submissions advanced on behalf of both parties and perused the record.

29. It is, no doubt, true that the Village Policemen or *Gram Prahari* are not enrolled members of the Police under the Police Act. They are described under the U.P. Police Regulations as Village *Chowkidar*. Nevertheless, they are regarded under Paragraph 396 of the U.P. Police Regulations as one of the bodies of the Police Force. Paragraph 396 reads:

“396. Bodies of the police force.- The Police Force consists of the following bodies :

- | | | |
|---|--|---|
| 1 | Provincial Police, Civil Armed and Mounted | Appointed and enrolled under Act V of 1861 |
| 2 | Government Railway Police | Appointed in Agra under Act XVI of 1873 and in Oudh under Act XVII of 1876. |
| 3 | Village chaukidars | Not enrolled under Act V of 1861” |

30. Paragraph 396 of the U.P. Police Regulations makes it apparent that though part of the body of men comprising the Police Force of the State, the Village *Chaukidar* are not enrolled members. They trace their appointment to statutes of antiquity, that is to say, the Act of 1873 and the Act of 1876, one of which,

as already noticed, has been repealed in the year 2017. The duties of the Village Policemen or *chaukidar*, as they are called under the U.P. Police Regulations, can be had an idea of, upon a perusal of Paragraphs 89, 90, 245, 257, 260, 261, 267 and 273. These paragraphs of the U.P. Police Regulations read:

“89. Chief duty of village chaukidar.- The village chaukidar is a village servant, whose chief duty is the watch and ward of the villages in his charge. He is required to carry reports for the village headman to assist him in tracing offenders, and to make arrests as authorized by law. He is responsible to the District Magistrate for the due performance of his duties. The rules relating to village headman are in the Manual of Government Orders.

90. Freeships to Chaukidar.- Village Chaukidars are not prohibited from cultivating land; they must reside in one of the villages for which they are responsible. They must be employed on menial duties by members of the constabulary force.

245. Names of history sheeters will be entered in beat book of constables and crime record book of village chaukidars.- The names of all history-sheet men will be entered in notice-books of beat constables and in the crime record book of village chaukidars. All visits by officer and men to village in which bad characters reside will be shown in the fly-sheet of the village crime note-books and an entry in the fly-sheet will indicate that all class A history sheet men in the village have been visited. A full note showing the result of these visits will be made in the general diary, with a reference to the number of the general diary report in the fly sheet, when anything of importance is ascertained a brief note will also be made in the history-sheet. In cities a separate fly-sheet on which visits of the suspect will be recorded should be attached to each history-sheet.

Note.- Fly sheet is also known as the index of surveillance of history sheeters.

257. Movement of history sheeters should be informed by beat constable or village chaukidar to S.O. – It is the duty of the village chaukidar or beat constable (in towns) whenever a bad character on a history-sheet leaves his home, immediately to inform the officer-in-charge of the police station of his departure and his destination, if known.

260. Visit of history sheeters within circle, be verified by inquiry through beat constable- When a bad character leaves his home for an unusual or suspicious destination within the circle of which he is a resident, the report of the constable or chaukidar will be entered in the general diary and the visit will be verified as soon as possible by inquiry through a constable or from the chaukidar of the village to which the bad character is alleged to have gone.

261. Reports made by chaukidars of departure of bad characters- Reports made by chaukidars of departures of bad characters (1) to a destination outside the circle, (2) to an unusual destination within the

circle (3) to an unknown destination, (4) at night will be recorded in the general diary, and a reference to the number and date of every such report will be entered in the chaukidar's crime record book in the column provided for the purpose after each suspect's name.

267. Duty of village chaukidar when he hears of the arrival of a suspicious stranger in his village- If the village chaukidar hears of the arrival of a suspicious stranger in his village he will question him regarding his antecedents and residence and will send or take to the police station as quickly as possible all the information so obtained.

273. Where a telephone is available inquiry slips will not ordinarily be despatched- The duties assigned to chaukidars in rural areas will be performed in cities and towns by the police. Where a telephone is available, inquiry slips will not ordinarily be despatched, but the telephone will be used whenever reports of arrival or departure are received, such reports being recorded in the general diary or departure are received, such reports being recorded in the general diary and inquiry slips being prepared for purpose of record. Replies received by telephone will similarly be entered in the general diary and on the inquiry slip. City inspectors and officer-in-charge of city police stations will be responsible for seeing that files of inquiry slips are kept up-to-date and that replies are promptly given to telephone inquiries. Any delay of more than 24 hours in replying by telephone to an inquiry about the movement of a bad character should at once be reported to the city inspector."

31. How much or how many of these duties that are enjoined under the above quoted paragraphs of the U.P. Police Regulations, now fall on the shoulders of the Village Policemen, is a matter of not much controversy. A look at the duties, prescribed for the Village Policemen, does not show them to be very relevant in the modern age. Their chief duty is described in Regulation 89 as watch and ward of the villages in their charge. One of the other duties is to carry reports for the village headman, assist him in tracing offenders and make arrests, as authorized by law. In the contemporary society, we have a system of an elected *Panchayat* and a three tier *Panchayatiraj* with constitutional status. There is no village headman in the sense understood in the day, when Paragraph 89 of the U.P. Police Regulations was made. Hardly anyone would trust a Village Policemen or a *Gram Prahari* to make arrests for the law. In the modern world, arresting an offender has almost become a technically trained job, involving matters of personal

security of the arresting officer, the safety and security of those around and also of the person arrested. There are complicated rules of arrest to be followed with intricate guidelines laid down by the Constitutional Courts.

32. The attendance at the police station for the Village Policemen twice a month is to report on births and deaths. The registration of births and deaths in villages, nowadays, no longer remains a matter of police surveillance. With growing education and the requirements of various records necessary to be part of modern rural life, the family have to get their births and deaths registered under the Registration of Births and Deaths Act, 1969, with whosoever be the designated officer.

33. In the village, the function to record births and deaths rests with the Gram Panchayat. Chapter IV of the U.P. Panchayat Raj Act, 1947 (for short, 'the Act of 1947') relates to powers, duties, functions and administration of Gram Panchayat. Section 15 is concerned with functions of Gram Panchayat. Section 15 (xxiii) reads:

“15. Functions of Gram Panchayat – Subject to such conditions as may be specified by the State Government, from time to time, a Gram Panchayat shall perform the following functions, namely –

xxiii- Medical and sanitation

(a) Promoting rural sanitation.

(b) Prevention against epidemics.

(c) Programmes of human and animal vaccination.

(d) Preventive actions against stray cattle and live stock.

(e) Registering births, deaths, and marriages.”

34. In order to further the aforesaid functions of the Gram Panchayat, the Government have framed U.P. Panchayati Raj Act (Maintenance of Family Registers) Rules, 1970 (for short, 'the Rules of 1970') in the exercise of powers under Section 110

of the Act of 1947. It envisages the maintenance of a family register in Form A, carrying family-wise names and particulars of all persons ordinarily residing in the village, pertaining to the Gaon Sabha. Rule 2 says that ordinarily one page shall be allotted to each family in the register. It is provided by Rule 3 that every person, who has been ordinarily residing within the area of the Gaon Sabha, shall be entitled to be registered in the family register. There is a provision for quarterly entries in the family register in Rule 4. It mandates that at the beginning of each quarter, commencing April of a year, the Secretary of the Gaon Sabha is obliged to make necessary changes in the family register, consequent upon births and deaths, if any, that have occurred in the previous quarter in each family. Such changes shall be laid before the next meeting of the Gram Panchayat for information. There is then Rule 5 of the Rules of 1970, which invests the Assistant Development Officer (Panchayat), on an application made to him, with power to order the correction of any existing entry in the family register. The Secretary of the Gaon Sabha is obliged to carry out the orders made by the Assistant Development Officer (Panchayat) on these applications.

35. The new statutory regime under the Act of 1947, would show that the reporting and registration of births and deaths in a village is now almost the exclusive province of the Gaon Sabha. The onerous duty of reporting every death and birth in the village placed on the shoulders of a Village Policemen under the U.P. Police Regulations does not seem to have much purpose. During the hearing too, nothing was pointed out that each birth and death in the village was at all a matter of such important police intelligence that every child entering the world and every person exiting it, must be known to the Police Station

immediately, and *a fortiori*, the District Superintendent of Police. There does not appear much to this function of the Village Policemen or *Gram Prahari* or Village *Chaukidar*, now to be performed. The entire provision on reporting of the movement of history-sheeters and bad characters, as mentioned in Paragraphs 245, 257, 260, 261 and surveillance of suspicious strangers in the village, may still be part of the police intelligence, but in the modern world, equipped with far better systems of surveillance on suspicious characters, let alone history-sheeters, the role of the Village Policemen seems to be marginal.

36. There is another aspect of the matter, which was argued with much vehemence on behalf of the State. It was said that in the modern policing system, there is a great expansion of the policing network into the rural areas, with rural police stations being established in much higher number in each district. They have their *chowki* in remoter corners. There is a better road linkage to most villages and far better transport for the movement of the police to remote village areas. In addition, there are certain very new facilities that have come up with contemporary policing, like the 'Dial-112' facility, which is a mobile police squad to reach out any kind of emergency. To complement it, the residents of the village are no longer dependent on the antiquated system of landline phones, which were, at one time, a luxury in rural life. The strides in telecommunications have placed mobile telephones in the hands of almost all residents of a village, or may be a very high number of them, who can promptly reach the Dial-112 facility or the police station or *chowki* through a phone call. There are then newer systems available on these mobile sets, such as SMSs and WhatsApp messages to communicate. In this very

changed scenario, the role of the Village Policemen may be there, but all that the Court has been apprised with, it seems rudimentary.

37. How much of duties are then assigned to these Village Policemen, is a matter to be considered, and also if these are in the nature of a whole time and regular employment. The learned Counsel for the petitioners has drawn the Court's attention to a duty chart for the Village Policemen, assigning them duties in Police Station Garhwa, District Ballia on 22.01.2024 in the Ram Janma Bhumi Pran Pratishthan Karyakram. A perusal of the said chart shows that Village Policemen have been detailed to various places along with the regular police-teams on 22.01.2024 from 4:00 p.m. until end of the Pran Pratishthan Karyakram. The duty chart aforesaid is signed by the S.H.O., P.S. Garhwa, District Ballia. There is again a duty chart, showing assignment of duties on strategic points, along with members of the Police Force, during the Kanwar Yatra from 21.07.2024 to 19.08.2024. The assignment of duties is from 8:00 a.m. to 8:00 p.m., and likewise, from 8:00 p.m. to 8:00 a.m. It is not indicated in this document at Page 39 of the rejoinder affidavit, to which district it relates, but we assume that it is a duty chart for assignment of duties to Village Policemen. There is again a duty chart assigning duties to Village Policemen at strategic points within the local limits of P.S. Kaptanganj, District Basti on the occasion of Laxmi-Ganesh Pratima Visarjan on 27.10.2022, commencing 2:00 p.m. until end of the programme.

38. All that these documents would show is that when a large scale deployment of police is required, the Village Policemen are summoned to work shoulder-to-shoulder with the regular police, but the Village Policemen, being not members of the

enrolled police, it is not that they have regular assignment of duties everyday or they are not free to take up an avocation of their choice. The most essential trapping of a whole-time employment is the continuous obligation of the employee, right through the calendar year everyday to discharge his duties. It does not leave the employee free to pursue alternative avocations. In fact, pursuing an alternative job for an employee, like an enrolled policemen, is a misconduct. It is not so for the Village Policemen. Apart from acting as informers and sometimes auxiliaries, these Village Policemen, so long as they stay in the village, are as free as any other resident to pursue their own avocations, without objection from the Government or the Police. Of course, logically, they cannot travel to another city or disconnect themselves from the village, where they are appointed, for the purpose of their occupation or job. They have to remain embedded to the rural way of life, but within that life, they have all the freedom of engaging in any trade or occupation, unlike a government servant or an enrolled policeman.

39. Learned Counsel for the petitioners, in support of his case, that the petitioners are entitled to minimum pay scale given to Policemen in the State, placed heavy reliance on the decision of the Supreme Court in **Home Guards Welfare Association**. He has drawn our attention to the following remarks of their Lordships:

"**33.** In the cases before us though some of the Home Guards (Grah Rakshak) produced their appointment letters to show that they are serving as Platoon Havaldar for 10 to 28 years, we find that they have been enrolled and there is no appointment on regular basis. They have never been paid salary/wages and there is no provision to make any payment of salary/wages other than the duty allowance and other allowances.

34. In the form filled up by the Home Guards volunteers of each State, the Home Guards have specifically mentioned that they undertake to serve as a member of the Home Guards at any time and place in India if they are called out for training or duty. This is evident from Form I of the Himachal Pradesh Home Guards Act, 1968 which shows that they are entitled for temporary allowance and in case of injury sustained or disability occurred during the duty they are entitled for disability pension.

35. Similar is the case of Bombay Home Guards, who have been appointed as volunteers Home Guards under the Act. They also have given declaration that they have volunteered as a member of the Home Guard.

36. The Home Guards of NCT of Delhi also have been appointed to the organisation which is volunteer body under the Act. The provision discussed above makes it clear that the Chief Commissioner of Delhi only engage volunteers in the Home Guards. The Home Guards being volunteer body in the NCT of Delhi, the appellant Home Guards of Delhi cannot claim to be regular appointees.

37. It is not the case of the State Government that enrolment/appointments of the Home Guards were back door 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)* [*State of Karnataka v. Umadevi (3)* (2006) 4 SCC 1 : 2006 SCC (L&S) 753] , is not applicable in the case of the appellant 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.

38. 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 the police personnel.

39. In view of the discussion made above, no relief can be granted to the appellants either for regularisation of services or for grant of regular appointments, hence no interference is called for against the judgments [*Grah Rakshak*

Home Guards Welfare v. State, WP (C) No. 645 of 2005, order dated 26-5-2008 (HP); *Hardev Singh v. State of Punjab*, 2013 SCC OnLine P&H 2918; *Daya Singh v. State of Punjab*, WP (C) No. 7365 of 2013, order dated 8-4-2013 (P&H); *Balbair Singh v. State of Punjab*, WP (C) No. 12859 of 2013, order dated 31-5-2013 (P&H); *Anant Prasad v. Union of India*, 2013 SCC OnLine Del 314; *Surender Kumar v. Govt. (NCT of Delhi)*, WP (C) No. 3007 of 2010, order dated 20-5-2013 (Del)] 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 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."

40. The case related to Home Guards of the State of Himachal Pradesh, Punjab and the National Capital Territory of Delhi. A good number of Home Guards and their associations had moved the High Courts of their respective States, seeking regularization in service by filing writ petitions. All the High Courts had dismissed the petitions. The question involved, that was considered by the Supreme Court, is set forth in paragraph 3 of the report, which reads:

"3. The questions involved in these appeals are whether Home Guards of the States of Himachal Pradesh, Punjab and NCT of Delhi are regular appointees in the cadre/services of Home Guards and if not whether they are entitled for regularisation of their services?"

41. The Court traces the origin of the Home Guards to the days of World War-II in the following words:

"Genesis

7. In the Compendium of Instructions of Home Guards published by Directorate General Civil Defence, Ministry of Home Affairs, Government of

India, New Delhi, the Genesis of Home Guard Organisation is shown as below:

"1.1. Genesis

During World War II, "Home Guards", a voluntary citizen organisation for local defence was raised in the United Kingdom. In India, on 6-12-1946, Home Guards were raised in Bombay to assist the police in controlling civil disturbances and communal riots. Subsequently, this concept of a voluntary citizen's force as auxiliary to the police for maintenance of law and order and for meeting emergencies like floods, fires, famines, etc. was adopted by several other States such as Paranti Raksha Dal, West Bengal Village Block and Civic Guards. In the wake of Chinese Aggression in 1962, the Centre advised the States and the Union Territories to merge their existing voluntary organisations into one all-India force known as "Home Guards" which would be voluntary both in concept and character.

1.2. Role

The following revised roles are assigned to the Home Guards. These instructions have been reiterated from time to time:

(a) Serve as an auxiliary to the police and assist in maintaining internal security.

(b) Assist the community in any kind of emergency, an air raid, a fire, a flood, an epidemic and so on.

(c) Organise functional units to provide essential services such as motor transport, pioneer and engineer groups, fire brigades, nursing and first aid, operation of water and power supply in installations, etc.

(d) Promote communal harmony and give assistance to the administration in protecting weaker sections of the society.

(e) Participate in socio-economic and welfare activities such as adult education, health and hygiene, development schemes and such other tasks as are deemed useful."

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42. It would be noticed that in the various statutes relating to Home Guards in the three different States, which their

Lordships considered, the Home Guards are, no doubt, a volunteer force, but they have a rank, file and battalion. At higher levels of their ranks, they are regular employees. Their duties are far wider and the Force, to which they belong, exists in stronger numbers. This leads to their constant association as an auxiliary to the Police in all contemporary policing duties. Nevertheless, at the level of the Home Guards, the Force being that of volunteers, the case for regularization in service was not accepted by the Supreme Court, but the allowances payable to them for the days when called out to duty, were directed to be paid at such rates that the total for 30 days, works out to the minimum pay payable to police personnel of the State, in which, the Home Guards were working. As already remarked, the origin, the conditions of service and the nature of the Home Guards' establishment, is very different from a Village Policemen. The Village Policemen were installed as 'the third eye' in the days gone by and associates of the Police. No doubt, in contemporary times, they too are detailed to duty, but not being part of a regular Force, even enrolled as part of a Force, like the Home Guards, the two cannot be equated. The terms of engagement of a Village Policeman, compared to a Home Guard, are far less taxing, impose much limited obligation and give much occupational freedom. In our State, the Home Guards are governed by a similar statute, like those noticed in **Home Guards Welfare Association**. The statute in U.P., governing the Home Guards, is called the U.P. Home Guards Act, 1963.

43. The Home Guards in U.P. petitioned this Court, as already said, in **Ram Nath Gupta**, invoking our writ jurisdiction, to direct the State to pay them emoluments and other benefits equal to the pay and other benefits, which are admissible to police

personnel. Placing reliance upon the decision of the Supreme Court in **Home Guards Welfare Association, in Ram Nath Gupta**, this Court accepted the claim to minimum pay, equivalent to policemen, holding:

"21. From a perusal of provisions contained in U.P. Home Guards Adhininyam, 1963 and rules framed thereunder, I am completely convinced that the Home Guard organization in the State of U.P. is no different than the Home Guard organization in the State of Himachal Pradesh.

22. The State legislature by passing U.P. Act No. XXIX of 1963 enacted U.P. Home Guards Act, 1963. Section 3 of the said Act provides as under :

3. Constitution of Home Guards.-There shall be raised and maintained a volunteer force to be designated the Uttar Pradesh Home Guards, hereinafter called the Home Guards and it shall be constituted in the manner prescribed.

23. Function of Home Guards have been defined in Section 4 of the Act which is extracted hereinbelow :

4. Functions.-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.

24. Section 9 of the Act provides for powers, privileges and protection of Home Guards which runs as under :

"9. Powers, privileges and protection of Home Guards.-(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 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 (Act V of 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 corresponding rank in the police force to the one he holds for the time being in the Home Guards.

(2) No prosecution shall be 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.''

25. Section 10 of the Act provides that a Home Guard acting in discharge of his functions under the Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. However, he will not be deemed to be a holder of a civil post. The Act even provides for certain penalties if a home-guard indulges into certain kinds of misconducts including desertion and act of cowardice or if he indulges into unwarranted personal violence to any person in his custody.

26. Looking into the nature of organization and also looking into the nature of duties the home-guard performs, as has been elaborated by Hon'ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra) and as has been enumerated in the various provisions quoted hereinabove of U.P. Home Guards Act, 1963, I have no hesitation to hold that the petitioners are also entitled to be given the benefit of the judgment of Hon'ble Supreme Court dated 11.3.2015 passed in the case of Grah Rakshak, Home Guards Welfare Association (supra). The reasons, which have been assigned by the State Government while filing the counter-affidavits in this case and also the reasons given by the Expert Committee in its decision held on 14.1.2013, thus, run contrary to the reasons given by Hon'ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra) for issuing the direction to the State Governments, who were

party therein, in relation to entitlement of the daily allowance to the Home Guards.

27. It is also noteworthy that Hon'ble Supreme Court has negatived the prayer for regularization of the services or grant of regular appointments to the Home Guards.

28. For the reasons given above and in view of the judgment of Hon'ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra), this bunch of writ petitions is disposed of with the following observations and directions:

(A) No relief to the petitioners for regularization of their services or grant of regular appointments can be granted and hence, the prayer made in this respect in this bunch of writ petitions is declined.

As a corollary, the prayer made by some of the petitioners for grant of salary in the regular scale of pay is also rejected.

B. The State Government is directed to consider the claim of the petitioners and other Home Guards for grant of duty allowance at such rates, total of which, thirty days (a month) comes to minimum of the pay to which a police constable in the State Government is entitled to in terms of the directions issued by Hon'ble Supreme Court in the case of Grah Rakshak, Home Guards Welfare Association (supra). The State Government shall pass appropriate orders expeditiously, say within a period of three months from the date of production of certified copy of this order."

44. Section 9 of the U.P. Home Guards Act, 1963 constitute them into a volunteer force and they are enrolled into that force. Section 9, noticed by this Court in **Ram Nath Gupta**, mentions the conferment of identical powers, privileges, protections to a Home Guard, when called out under Section 8 as that given to a police officer. No doubt, the Village Policemen may also have been conferred with some privileges under the Police Regulations, like tracing offenders and to make arrests authorized by law, but the duties in Paragraph 89 appear to be very rudimentary and relate to a different age. It is true that the

Village Policemen or the *Gram Prahari* are detailed to duty alongside policemen on particular occasions, but the nature of auxiliary function they perform, in our considered opinion, is not comparable to the Home Guards. The Home Guards are a force with enrolment under an Act raising them. Their involvement with the police is more regular, with little scope for engagement in alternative occupations. The assignments of the Village Policemen, by contrast, are much more intermittent, giving them wide freedom to pursue an avocation of their choice, of course, not distancing themselves from their village locale.

45. The essence of the Village Policemen's duties, as originally envisaged, appears to be the third eye for the police, an eye of intelligence on the day-to-day happenings in the village and movement of criminals. These policing requirements, though still there, have undergone a complete change with much more deep and effective policing available in the hands of the regular police in the rural areas. The Village Policemen may now have a slender function to perform in this regard. Of course, intelligence inputs from the Village Policemen can always be there, but that is not an instance of duty done in an organized force. The calling of Village Policemen to aid of the regular police on occasions, like Ram Janma Bhumi Pran Pratishthan Karyakram, Kanwar Yatra and Laxi-Ganesh Pratima Visarjan, show them to be auxiliaries to the Police, but not frequent and regular performers of police functions. In our considered opinion, therefore, no parity can be drawn between Home Guards and the Village Policemen or the *Gram Prahari*, on the principles laid down in **Home Guards Welfare Association** and **Ram Nath Gupta**.

46. There are then cases from other kinds of employ, on the foot of which parity is drawn by the learned Counsel for the petitioners. One of them came up for consideration in **Chandrawati Devi**, which is about cooks, working under the mid-day-meal scheme for Basic Primary Schools. The cooks employed under the scheme were initially paid monthly wages of Rs.1000/- per month, i.e., way back in the year 2005, but *vide* order dated 09.03.2019, it was enhanced to Rs.1500/- per month. The Court came down heavily on the Government, calling the rate of wages an instance of forced labour and *begar*, prohibited under Article 23 of the Constitution. It was remarked that the petitioner, who was a very poor woman, was never in a position to bargain with the might of the State and continued to suffer discrimination. The following remarks in **Chandrawati Devi** are relevant:

"8. This Court can also not overlook the fact that the persons employed as cooks throughout the State of Uttar Pradesh are being paid such paltry amounts which clearly qualify as forced labour and they continue to render their services without any complaint whatsoever. This Court cannot comprehend that a person earning Rs. 1,000/- per month would be empowered to approach this Court, more particularly because of their socio economic condition, which forced them to accept the services on such conditions as have been imposed by the State.

9. I am of the firm view that the Government Orders, referred to by the Standing Counsel being the Government Order dated 24th April, 2010 prescribing Rs. 1,000/- per month as wages and the Government Order dated 9th March, 2019 prescribing the minimum wages at Rs. 1,500/- per month are clearly a form of ''Forced Labour'', which is specifically prohibited under Article 23 of the Constitution of India. Thus, I have no hesitation in holding that the State has misused its dominant position in fixing the wages as have been fixed by the two Government Orders to be paid to the cooks employed for providing mid-day-meal."

47. On the aforesaid reasoning, this Court issued a general *mandamus*, directing the State to ensure payment of wages to cooks employed under the mid-day-meal scheme in government/ semi-government primary schools at the rate prescribed under the Minimum Wages Act. The aforesaid decision in **Chandrawati Devi** and the principles laid down there are of no avail to the petitioners as the said judgment of the learned Judge has been set aside by the Division Bench on appeal, in **State of U.P. through Principal Secretary (Basic Education) and others v. Chandrawati Devi and others, 2021:AHC:26379-DB**.

48. The other parity from a different kind of employment, that was drawn by the learned Counsel for the petitioners, was on the foot of **Sabha Shanker Dube** (*supra*). The facts in **Sabha Shanker Dube** can best be recapitulated in the words of their Lordships as these appear in the report. These read:

"2. The appellants are daily-rated workers employed in Group 'D' posts in the Forest Department in the State of Uttar Pradesh. They filed writ petitions before the High Court of Allahabad seeking regularisation of their services, the minimum of the pay scales available to their counterparts working on regular posts and treating them as being in continued service while condoning the breaks in their service. The writ petitions were dismissed by a learned Single Judge by the judgment dated 28-4-2004 [*Jawahar v. District Judge, 2004 SCC OnLine All 2437*]. Regularisation of daily-wagers was directed to be considered in accordance with the relevant rules by condoning the breaks in service if it is less than 3 months. It was held that a direction for regularisation cannot be issued. The learned Single Judge rejected the claim of the appellants regarding the minimum of the pay scales by holding that such a direction cannot be granted under Article 226 of the Constitution of India. The special appeals filed by the appellants were dismissed by a Division Bench of the High Court of Allahabad by a judgment dated 24-9-2015 [*Ram Pratap Dwivedi v. Conservator of Forest, Special Appeal No. 1198 of 2006 sub nom Raj Kumar Ram v.*]

State of U.P., 2015 SCC OnLine All 9088] by relying upon its earlier judgment in *State of U.P. v. Chhiddi* [*State of U.P. v. Chhiddi*, 2015 SCC OnLine All 9087 : (2016) 1 All LJ 226].

3. Special Appeal No. 1530 of 2007 was filed by the State of Uttar Pradesh against the judgment of the learned Single Judge dated 17-10-2005 in *Sanjay Kumar Srivastava v. Conservator of Forest* [*Sanjay Kumar Srivastava v. Conservator of Forest*, 2005 SCC OnLine All 2346] . The said writ petitions were filed by daily-wagers working in Group 'C' and Group 'D' posts in the Forest Department of the State of Uttar Pradesh. Regularisation of services and equal pay for equal work were the reliefs that were sought by the petitioners in those writ petitions. The learned Single Judge allowed the writ petitions by directing the State Government to reconsider the petitioners therein for regularisation of their services, ignoring artificial breaks and by relaxing the minimum educational qualifications and the physical endurance requirements prescribed by the service rules. The Selection Committee was directed to reconsider candidature of all the petitioners therein for regularisation. Such of those persons who were found eligible for regularisation were directed to be regularised in the vacancies that may arise in the future in their respective divisions. There was a further direction that the petitioners therein shall be continued on daily wages till their regularisation and be paid a minimum of the pay scales.

4. In the appeal filed by the State of Uttar Pradesh, a Division Bench of the High Court set aside the directions issued in the writ petitions relating to the relaxation of minimum educational qualifications and physical endurance requirements as also the direction pertaining to the minimum of the pay scales to be paid to the daily-wagers. The directions issued by the learned Single Judge to relax the conditions of the requisite minimum qualifications and physical endurance requirements were found to be unjustified by the Division Bench. Placing reliance on a judgment of this Court in *State of Haryana v. Tilak Raj* [*State of Haryana v. Tilak Raj*, (2003) 6 SCC 123 : 2003 SCC (L&S) 828] and *State of Punjab v. Surjit Singh* [*State of Punjab v. Surjit Singh*, (2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] , the Division Bench of the High Court held that the daily-wagers are not entitled to the minimum of the pay scales."

49. While the Court did not ultimately agree to the petitioners' claim for regularization, but following the judgment of the Supreme Court in **Jagjit Singh** (*supra*) and **State of U.P. and others v. Putti Lal**, (2006) 9 SCC 337, the petitioners were held entitled to minimum pay scales, which regular employees, working on the same post, were receiving.

50. Now, **Sabha Shanker Dube** was a case, where the petitioners were daily-rated workers employed in Group-D posts in the Forest Department of U.P. They were discharging the same functions as regular employees, holding the same post. They had full duty hours to perform and there was an employment properly so called, may be on uncertain and weak terms of engagement. It was not that Group-D employees, working on daily-rated basis in the Forest Department of the State of U.P., had a duty of a kind that left them with all the freedom to pursue another avocation or the work that was intermittent or contingent. It was regular work. Here, in the petitioners' case, these factors of confining or encompassing daily duty employment are missing. There is, thus, no basis to draw any kind of parity with the principles laid down in **Sabha Shanker Dube**.

51. The crux of the matter then is that the Village Policemen or *Gram Prahari* or *Chaukidar*, as they are called under the U.P. Police Regulations, not being enrolled members of the Police Force, do not serve in terms of a six, eight or longer hours of a daily schedule of work for the State. Intermittently, no doubt they may be assigned onerous or sensitive duties, but most of their work, as earlier remarked, is overtaken by a better equipped regular police, besides very different kind of technological advancements, not envisioned in the day, when the Village Policemen were conceived as the State's third eye,

in remote corners of the country. They would now seem to have shrinking duties unless their terms of employment are revised and they are asked to work under a different kind of regime.

52. If enacted, a legislation of that kind may bring in new terms and conditions of employment for Village Policemen or *Gram Prahari*, more duties, a new method of selection, appointment, service conditions and responsibilities. And, of course, once this is done, the new policy of the Government embodied in the statute would offer them good and reasonable remuneration. It is another matter that the duties of these kind of Village Policemen may then undergo a drastic change and it might become a whole-time occupation. These are, after all, policy matters for the Government to go into and decide; not for this Court to direct and provide.

53. As matters stand, a Village Policeman is free to undertake any kind of business, trade or occupation and earn his livelihood out of it; and, still, he can very well discharge his duties as a Village Policeman. It is in this context that the honourarium, being paid to the Village Policeman or *Gram Prahari*, is to be judged on the test of reasonableness. We do not think that the *Gram Prahari* or Village Policemen are in any way subjected to any kind of bondage or forced labour, taking advantage of their position, emanating from the lack of employment opportunities. For whatever work they do, which may, at some time be onerous, the remuneration of Rs.2500/- per month in the present day may be far on the lower side, but that does not make it arbitrary, unreasonable or violative of Article 14 of the Constitution. The reason, as already said, is that this is not a whole time employment done by the incumbent as his source of livelihood. The question that even for the work that the Village Policemen do, the remuneration of Rs.2500/-

per month is far on the lower side, is a matter for the policy making of the Government. It is not a case which brings in violation of Articles 14, 21 or 23 of the Constitution.

54. Here, it may be noticed that there are certain other amenities provided to the Village Policemen, apart from their monthly remuneration. These are:

- i. Each Gram Prahari will be given 1 torch of 4 cells (Rs. 320/-per torch) and for each torch 4 cells will be given every month (Rs. 60/-).
- ii. Each Gram Prahari will be given 1 cycle in 10 years (Rs. 3000/- per cycle). Those who have already been given cycles will be given cycles again only after the said period is over.
- iii. All Gram Praharis will be given maintenance allowance at the rate of Rs. 600/- every year for the maintenance of the cycles provided to them.
- iv. Each Gram Prahari will be given a photo identity card (Rs. 35/- per identity card).
- v. Apart from the above, uniforms will be provided to the Gram Prahari free of cost for the period as per Section 261 of Police Regulation/ Uttar Pradesh Police Uniform Regulation as follows:

1.	Red Safa	1 piece	3 Years
2.	Khakhi Coat	2 piece	3 Years
3.	Chaukidar Jersey	1 piece	3 Years
4.	Dhoti	2 piece	2 Years
5.	Belt Clasp	1 piece	20 Years
6.	Leather Belt	1 piece	15 Years
7.	Shoes	1 piece	3 Years

55. Essentially, shorn of the remuneration for a particular kind of employment being patently arbitrary, discriminatory or a case of *begar*, where one or the other fundamental right is violated, it is not the province of the Court to issue directions to the Government to revise salaries or provide for better working conditions. These are essentially financial and policy matters, falling within the executive domain. In **Naveena Prabhu** (*supra*), it was held by the Supreme Court:

“14. The abovesaid order, therefore, makes it crystal clear that while introducing the direct

payment system by the Government in respect of Padiar Medical College, such benefit was extended to the members of the staff of the College whereas the staff of the hospital attached to the College was specifically excluded from the applicability of the aforesaid benefit. This order was never challenged by any of the respondents herein since such benefit of direct payment system was not extended to the staff of the hospital attached to the College. They did not acquire any status and consequently they acquired no right being specifically excluded from the benefit thereof.

15. The decision of the Government to exclude the staff of the hospital attached to the College from the purview of the aforesaid orders was made specifically stating that direct payment system is not introduced by the Government so far as the College hospital is concerned. The same being a policy decision of the Government and having not been challenged as either arbitrary or discriminatory at any stage by the respondents, thus we are not called upon to scrutinise the legality and validity of the aforesaid decision. Besides, the same being a policy decision of the Government, the same stands as this Court generally does not interfere with the policy decision of the Government.

16. It was one of the contentions of the respondents that the nature of duties and responsibilities of the teaching staff of the College and the staff of the hospital being the same there can be no discrimination so far as the staff of the hospital is concerned. It is true that the teaching staff of the College as also non-teaching staff are being given the benefit of direct payment system but that itself would not entitle or make the staff of the hospital eligible to claim the said benefit.

17. Our attention could not be drawn to the fact that there is any assessment by any authority with regard to the nature of duties and responsibilities discharged by the teaching and non-teaching staff of the College vis-à-vis the staff of the hospital. Without going into the technicalities, it could also be said that nature of duties and responsibilities in the College would be distinctly different and separate from that of the duties and responsibilities of the staff in the hospital attached to the College. This Court also cannot issue any direction for over inclusion of the staff as it involves financial implications."

56. In **Bhagwan** (*supra*), the question was about the entitlement of employees of a registered society, funded by the State to receive pension at par with employees of the State. The Government had taken a policy decision in a meeting of the Cabinet that grants-in-aid given to Institutes, Corporations etc., would not entitle employees of such autonomous bodies funded by the State to pensionary benefits. The claim to pension for employees of the Society, known as the Water and Land Management Institute, had been accepted by the High Court, holding them entitled to pension at par with employees of the State Government. Upon a challenge to the Supreme Court, it was held:

"26. As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on a par with the government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the autonomous Board/body cannot be put on a par.

27. In *Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia* [*Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia*, (2021) 8 SCC 784 : (2021) 2 SCC (L&S) 838] , in para 32, it is observed as under : (SCC p. 805)

"32. The Central or State Government is empowered to levy taxes to meet out the expenses of the State. It is always a conscious decision of the Government as to how much taxes have to be levied so as to not cause excessive burden on the citizens. But the Boards and Corporations have to depend on either their own resources or seek grant from the Central/State

Government, as the case may be, for their expenditures. Therefore, the grant of benefits of higher pay scale to the Central/State Government employees stand on different footing than grant of pay scale by an instrumentality of the State."

28. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences.

29. In the present case, WALMI being an autonomous body, registered under the Societies Registration Act, the employees of WALMI are governed by their own Service Rules and conditions, which specifically do not provide for any pensionary benefits; the Governing Council of WALMI has adopted the Maharashtra Civil Services Rules except the Pension Rules. Therefore, as such a conscious policy decision has been taken not to adopt the Pension Rules applicable to the State Government employees; that the State Government has taken such a policy decision in the year 2005 not to extend the pensionary benefits to the employees of the aided institutes, boards, corporations, etc.; and the proposal of the then Director of WALMI to extend the pensionary benefits to the employees of WALMI has been specifically turned down by the State Government. Considering the aforesaid facts and circumstances, the High Court is not justified in directing the State to extend the pensionary benefits to the employees of WALMI, which is an independent autonomous entity.

30. The observations made by the High Court that as the salary and allowances payable to the employees of WALMI are being paid out of the Consolidated Fund of the State and/or that the WALMI is getting grant from the Government are all irrelevant considerations, so far as extending the pensionary benefits to its employees is concerned. WALMI has to run its administration from its own financial resources. WALMI has no financial powers of imposing any tax like a State and/or the Central Government and WALMI has to depend upon the grants to be made by the State Government.

31. Now, so far as the observations made by the High Court that the amount available with WALMI and deposited with EPF towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to the employees and, therefore, there is no justification and/or reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI is concerned, it is to be noted that merely because WALMI has a fund with itself, it cannot be a ground to extend the pensionary benefits. Grant of pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits. Therefore, merely because at one point of time, WALMI might have certain funds does not mean that for all times to come, it can bear such burden of paying pension to all its employees. In any case, it is ultimately for the State Government and the Society (WALMI) to take their own policy decision whether to extend the pensionary benefits to its employees or not. The interference by the judiciary in such a policy decision having financial implications and/or having a cascading effect is not at all warranted and justified."

57. In the background of what we have said above, we are of opinion that the petitioners are not entitled to a *mandamus*, ordering the State Government to revise and enhance their honourarium or pay, by whatever name called, to bring it at par with the minimum pay scale earned by a Policeman, who is an enrolled member of the State Police. At the same, we are also of opinion that there being a recommendation by the Law Commission, headed by Mr. Justice A.N. Mittal, for the enactment of a statute to regulate, *inter alia*, the service conditions of *Gram Prahari* or Village Policemen, the Government may consider enacting a suitable legislation to make and render the office of the Village Policemen or Gram Prahari, effective and vibrant in contemporary times.

58. Both the writ petitions are **disposed of** accordingly.

Order Date :- 19.5.2025

Anoop

(J.J. Munir)
Judge