



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**R/LETTERS PATENT APPEAL NO. 761 of 2024**  
**In R/SPECIAL CIVIL APPLICATION NO. 8866 of 2024**  
**With**  
**CIVIL APPLICATION (FOR STAY) NO. 1 of 2024**  
**In R/LETTERS PATENT APPEAL NO. 761 of 2024**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

**Sd/-**

**and**

**HONOURABLE MS. JUSTICE GITA GOPI**

**Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

JAYESHKUMAR BHAGWANBHAI PANCHOLI

Versus

STATE OF GUJARAT & ORS.

**Appearance:**

MS PRACHI UPADHYAY, ADVOCATE for

MR VAIBHAV A VYAS(2896) for the Appellant(s) No. 1

MS SHRUTI R. DHRUVE, AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

**CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA**

and

**HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 29/10/2024**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. **ADMIT.** Learned Assistant Government Pleader waives service of notice of admission on behalf of respondent No.1 - State. Respondent no.3 has chosen not to contest the present appeal.



2. The present appeal filed under Clause 15 of the Letters Patent, 1865, is directed against the impugned order dated 27.06.2024 passed by the learned Single Judge in the captioned writ petition.

3. Pursuant to the advertisement (Annexure 'D'), the appellant applied for the post of District Commandant, Home Guard (Class-I), District Narmada. The advertisement was issued pursuant to the communication dated 14.09.2023 issued by the Office of Director General of Civil Defence and Home Guards. The appellant - original petitioner has assailed the appointment of the respondent no.3 to the post of District Commandant, Home Guard (Class-I) on honorarium basis at Narmada District. He was appointed vide a Notification dated 05.03.2024. The challenge to the appointment is on the ground of lack of educational qualification of respondent no.3. The appellant is a Bachelor of Commerce, whereas the respondent No.3 is 9<sup>th</sup> Standard.

4. When a specific query was raised to the learned Assistant Government Pleader that what weighed upon the State Government in appointing the respondent no.3, on the post of District Commandant, when the personnel such as Home Guards, Armourer (Class-III), Junior Staff Officer (Administration) Class-II and Head Clerk (Class-III) are recruited on the basis of their educational qualifications, which is more than 9<sup>th</sup> Standard; in response thereto the learned Assistant Government Pleader has stated that the respondent No.3 is appointed on the basis of his experience as a District Commandant, Home Guard, by invoking Clause-12 of the



Guidelines dated 29.09.2018, which specifies that the State Government can appoint the District Commandant of Home Guards by ignoring the provisions of Section 2(1)(2) of the Gujarat Home Guards Act, 1947.

5. Thus, the respondent no.3 is appointed as a District Commandant, Home Guard, (Class-I) on the basis of his experience only.

6. Section 2(1)(2) of the Gujarat Home Guards Act, 1947 reads as under : -

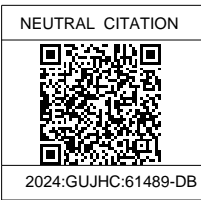
*"SECTION 2: Constitution of Home Guards and appointment of Commandant 7 [Commandant General and Commandant]*

*(1) the [State] Government shall constitute for each of the areas specified in sub-section (3) of section Land for each of the areas notified under the said sub-section (3) a volunteer body called the Home Guards the members of which shall discharge such function [and duties) in relation to the protection of persons, 10 [the security of property, the public safety and the maintenance of essential services] as may be assigned to them in accordance with the provisions of this Act and the rules made thereunder.*

*(1-A) In respect of the Saurashtra area and the Vidarbha region, the Home Guards raised or constituted. Immediately before the commencement of the Bombay Home Guards (Extension and Amendment) Act, 1958, (Bom. LXXV of 1957) shall be deemed to be constituted under sub-section (1).*

*(2) The [State] Government shall appoint a Commandant of each of the Home Guards constituted under sub-section (1)./*

*[(3) The State Government shall also appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the [State of Gujarat)."*



7. Thus, the State Government has appointed the respondent No.3, by ignoring the statutory provisions and also Clause-2 of the Guidelines dated 29.09.2018, which categorically mentions that the first preference shall be given to the candidate, whose minimum educational qualification is upto the level of graduation. In the present case, the appellant, who is a graduate candidate and holding a Bachelor of Commerce Degree, is not selected however, respondent No.3, who is 9<sup>th</sup> Standard, has been selected on the post of District Commandant, Home Guards. Though, the appointment is on honorarium, the State Government cannot ignore its own guidelines and also the statutory provisions by appointing a person, who is 9<sup>th</sup> Standard.

8. It is also pertinent to note that for the appointment of Home Guards on honorarium basis, their educational qualification prescribed is minimum 10<sup>th</sup> Standard, as per the provisions of 3(A)(kha) of the Circular dated 23.09.2019 (Annexure 'L'). Thus, the respondent No.3, who is appointed as a District Commandant, Home Guards, possesses lesser qualification than a Home Guard, who is also appointed on an honorarium basis.

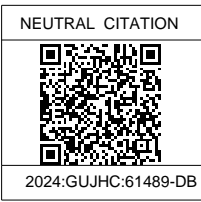
9. When we had invited the attention to the learned Assistant Government Pleader vide two orders passed by us on 17.10.2024 and 21.10.2024, the response from the State was that the appointment of the respondent No.3 is done in accordance with law and they would not like to disturb his appointment in any manner. Thus, if the stand of the State Government is taken as it is the State Government, by



resorting to the provisions of Clause-12 of the Resolution dated 29.09.2018 can even appoint a person on the post of District Commandant, who is 1<sup>st</sup> or 2<sup>nd</sup> Standard. We had also suggested that the State may conduct a fresh recruitment process of filling of the post of District Commandant, Home Guards for Narmada District, however, such suggestion is ignored by the State, hence, we have no other option but to pass the present order.

10. The State Government undertook the necessary exercise for filling up the post of District Commandant, Home Guards (Class-I) in various districts by publishing an advertisement. The appellant, along with the respondent No.3, applied for such post and a list of candidates was also published. Thus, the appellant, who is possessing a Bachelor of Commerce Degree and is a graduate, has been ignored while selecting respondent No.3, who is 9<sup>th</sup> Standard. This runs contrary to the guidelines dated 29.09.2018, which has been invoked by the State Government in appointing the respondent No.3, more particularly by resorting to Clause-12. It is shocking to note that the Clause-12 directs that the appointment to the post of District Commandant can be made by ignoring the statutory provisions of the Gujarat Home Guards Act, 1947. There is no provision in the guidelines dated 29.09.2018, which mentions that a candidate who has an experience on working on such post will be given preference, and the educational qualification of graduation will be relaxed to the extent that it can be below Class-III or Class-IV employees.

11. In wake of the aforesaid undisputed facts, we are inclined to quash and set aside the appointment of the respondent



No.3 and also the judgment and order passed by the learned Single Judge dated 27.06.2024, rejecting the captioned writ petition. Learned Single Judge has rejected the writ petition by placing reliance on the Government Resolution dated 29.09.2018 i.e. the guidelines. It is not disputed by the State Government that the personnel subordinate to the respondent No.3, possess more qualification than him. Such a vital aspect cannot be ignored by appointing a person on a post like the District Commandant, in whose jurisdiction the entire district would fall. The State Government has very conveniently ignored that the respondent no.3 will be supervising the duties of Home Guards, for whom the State Government has prescribed minimum qualification of 10<sup>th</sup> Standard.

12. The relaxation in educational qualification by giving primacy to the experience cannot be stretched to such an extent that the criterion of educational qualification gets diluted. Such approach of the State Government would be anathema to the Statute as well as the duties and responsibilities assigned to a District Commandant.

13. In view of overall facts and circumstances of the case, the present appeal succeeds. The same is allowed with a costs of Rs.10,000/- imposed upon the State - authority. The same shall be paid to the appellant within a period of two (02) weeks from the date of receipt of writ of this judgment. Accordingly, the impugned judgment and order passed by the learned Single Judge and appointment of respondent No.3 to the post of District Commandant are quashed and set aside. The State is directed to appoint the appellant to the post of District



Commandant of Home Guards, or to undertake necessary recruitment in Narmada District for appointment to the post of District Commandant. Necessary orders shall be passed within a period of three weeks from the date of receipt of the writ of the present order.

14. As a sequel, the connected civil application stands disposed of accordingly.

Sd/-  
**(A. S. SUPEHIA, J)**

Sd/-  
**(GITA GOPI, J)**

MAHESH/supp-b.-01