

**2023 LiveLaw (SC) 213**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

***M.R. SHAH; J., M.M. SUNDRESH; J.***

***CIVIL APPEAL NO. 8836, 8837 & 8836 /2022; March 17, 2023***

**PRAKASH KUMAR JENA & ORS. *versus* THE STATE OF ODISHA & ORS.**

**Payment for Home Guards - Home Guards working in the State of Odisha are entitled to Duty Allowance as per the minimum amount of pay to which the police personnel in the State is entitled to. It further clarified that the Home Guards shall be entitled to the periodical rise which may be available to the police personnel of the State and the Duty Allowance to be paid to the Home Guards should be periodically increased taking into consideration the minimum of the pay to which the Police personnel of the State are entitled considering periodical increase from time to time. (Para 9, 10) Followed *Grah Rakshak, Home Guards Welfare Association v. State of Himachal Pradesh*, (2015) 6 SCC 247**

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**J U D G M E N T**

**M. R. Shah, J.**

**1.** Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court of Orissa at Cuttack in W.A. No.319 of 2020, the original writ petitioners working as Home Guards and the State of Orissa both have preferred the present appeals.

**2.** Civil Appeal arising out of SLP No.3906 of 2022 has been filed by the State of Orissa and others challenging the order passed by the High Court of Orissa at Cuttack in W.P. (C) No.19556 of 2020 by which the High Court has disposed of the said writ petition in terms of the judgment and order passed in W.A. No.319 of 2020 which is the subject matter of C.A.No.8836 of 2022. Therefore, C.A. No.8836 of 2022 arising out of the impugned judgment and order passed by the High Court in W.A. No.319 of 2020 is treated as lead matter and the facts arising out of the said W.A.No.319 of 2020 are narrated, which are as under: -

2.1 That the original writ petitioners all are / were working as Home Guards for more than 10 to 15 years under the Home Department of the State of Orissa. After rendering 10 to 15 years of service, they filed the writ petition before the learned Single Judge for a direction to the State to disburse their salary as per the direction of this Court in the case of **Grah Rakshak, Home Guards Welfare Association vs. State of Himachal Pradesh and others** reported in **(2015) 6 SCC 247** and the subsequent order / clarificatory order dated 04.05.2016 passed in Contempt Petition (C) Nos. 699-700 of 2015, by which this Court clarified its earlier order. A relief was also sought to give them benefit of 7<sup>th</sup> Pay Commission from the date the same had been given to their counterparts of the other States. The learned Single Judge following the decision of this Court in the case of **Grah Rakshak (supra)** allowed the said writ petition directing the State Government to implement the recommendations of the Director General (Fire Service, Home Guards, Civil Defense), Orissa in respect of the Home Guards in the State of Orissa as per the decision of this Court in the case of **Grah Rakshak (supra)**. The learned Single Judge also directed the State to take into account the increase in the pay of the Constables on application of the 7<sup>th</sup> Pay Commission's report. That it is required to be noted that earlier the Director General

of Police, Orissa, recommended payment at the minimum sum of Rs.533/per day taking into consideration the remuneration available to the Constables in the State in the lowest rank in the Police personnel since 10.11.2016. Therefore, the learned Single Judge while granting one month time to the State Government to implement the said recommendation directed that the Home Guards in the State of Orissa pending decision under final fitment be paid provisionally at the minimum Rs.500/- from January, 2020, subject to the final decision of the Government of Orissa on implementation of the recommendation of the Director General.

2.2 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge in W.P.No.8148 of 2020, the State of Orissa and others preferred W.A. No. 319 of 2020. By the impugned judgment and order, the Division Bench of the High Court by and large affirmed the judgment and order passed by the learned Single Judge. However, The High Court restricted the payment at the rate of Rs.533/- per day to the Home Guards from January, 2020, instead of 10.11.2016, as directed by the learned Single Judge.

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court in W.A.No.319 of 2020, the original writ petitioners – Home Guards as well as the State of Orissa have preferred the present appeals.

**3.** Learned counsel appearing on behalf of the State of Orissa has vehemently submitted that the High Court has materially erred in directing the State to pay Rs.533/- per day as Duty Call-up Allowance (hereinafter referred to as “DCA”) to the Home Guards working in the State and the same would be much more than the amount being paid to the Constables at the entry level recruited as per Odisha Group-C & Group-D (Contractual Appointment) Rules, 2013 (hereinafter referred to as the Rule, 2013).

3.1 It is submitted that the High Court has failed to appreciate that earlier as per the 6<sup>th</sup> Pay Commission entitlement, the Constables at the entry level recruited as per Rule 2013 used to get Rs.7,200/- per month at entry level. Therefore, Home Guards in the State of Orissa were entitled to get Rs.240/- per day as Daily Pay allowance/ Duty Call-up Allowance. It is submitted that however, after the 7<sup>th</sup> Pay Commission, the pay of Police Constable at entry level was revised to a consolidated remuneration of Rs.9,000/- per month as against Rs.7,200/- per month. It is submitted that therefore and accordingly, the payment to the Home Guards was also revised to Rs.300/- per day from Rs.240/- per day apart from Rs.25/- per month towards Washing Allowance. It is submitted that therefore the State of Orissa as such complied the judgment of this Court in the case of **Grah Rakshak (supra)**.

3.2 It is further submitted that even the High Court has materially erred in taking into consideration the recommendations made by the Director General, as apart from the fact that the recommendations made by the Director General were not binding on the State Government, the Director General had also not taken into consideration the remuneration of the Constables at entry level appointed under Rule 2013. It is submitted that rather the recommendations are based on the comparative daily allowances of the Home Guards paid by other States in the country. It is submitted that the facts peculiar to the State of Orissa has not at all been taken into consideration by the Director General in the recommendations. It is submitted that therefore the High Court has failed in error by solely relying upon the recommendations of the Director General.

3.3 It is further submitted by learned counsel appearing on behalf of the State that if the Home Guards in the State are paid daily pay allowance / Duty Call-up Allowance at the rate of Rs.533/- per day as directed by the High Court, it would create an anomalous situation because the Constables at entry level as per 7<sup>th</sup> Pay Commission would get only Rs.9,000/- per month, whereas at the rate of Rs.533/- per day, the Home Guards would get more than Rs.15,000/- per month. It is submitted that therefore same would be against the judgment of this Court in the case of **Grah Rakshak (supra)**.

3.4 It is further submitted by the learned counsel appearing on behalf of the State that the High Court has also failed to appreciate that presently 16894 numbers of Home Guards are working in

the State and therefore if the Home Guards working in the State are paid salary as per the directions issued by the learned Single Judge modified by the Division Bench, in that case, a huge financial burden would be fastened upon the State.

3.5 With above submissions, it is prayed to allow the present appeals preferred by the State.

4. While opposing the present appeals preferred by the State, the learned counsel appearing on behalf of the respective Home Guards/ original writ petitioners / applicants have vehemently submitted that the direction issued by the learned Single Judge affirmed by the Division Bench of the High Court directing the State to pay DCA at Rs.533/- per day is absolutely in consonance with the judgment of this Court in the case of **Grah Rakshak (supra)** and the subsequent clarificatory order.

4.1 It is submitted that this Court in the case of **Grah Rakshak (supra)** though rejected the prayer of the Home Guards for regularization of their services or for grant of regular appointments, however, directed all the State Governments to pay them the DCA at such rate total of 30 days (one month) comes to minimum of the pay to which the Police personnel of the State are entitled. It is further submitted that thereafter dispute arose whether same includes DA or not and therefore this Court clarified that the payment of minimum of the pay would mean basic pay + grade pay + dearness allowance + washing allowance. It is submitted that this Court also further clarified that the pay that is given to the Home Guards will not be on a monthly basis but will be calculated with reference to each day of work put in by the Home Guards.

4.2 It is submitted that thereafter the Government of India, Ministry of Home Affairs as early as on 16.09.2016 requested all the Chief Secretaries of all States and Union Territories to issue necessary directions for compliance of the aforesaid judgment. It is submitted that thereafter many States have complied with the directions issued by this Court in the case of **Grah Rakshak (supra)** and the clarificatory order except the State of Orissa. It is submitted that even so far as the State of Orissa is concerned, the Director General in the year 2016 itself recommended to pay a minimum of Rs.533/- per day to the Home Guards in the State of Orissa from 10.11.2016 in light of the judgment of this Court in the case of **Grah Rakshak (supra)** and the clarificatory order.

4.3 Learned counsel appearing on behalf of the respective Home Guards have prayed to consider the following facts:

(i) This Hon'ble Court had in the judgment dated 11.03.2015 passed in the matter of Grah Rakshak, Home Guards Welfare Association vs. State of Himachal Pradesh directed payment of such DCA preferably within three months;

(ii) The Government of India, Ministry of Home Affairs as early as on 16.09.2016 had requested the Chief Secretaries of all States and Union Territories to issue necessary directions for compliance of the aforesaid judgment;

(iii) The Government of India, Ministry of Home Affairs wrote letter dated 5.10.2016 to the Secretary, Home Department, Government of Orissa for taking appropriate action regarding the complaint of Petitioner No.1 about disobedience of the order passed by this Hon'ble Court regarding payment of salary to Home Guards;

(iv) the Directorate General (Fire Service, Home Guards, Civil Defence) Odisha, in light of the judgment dated 11.03.2015 passed by the Hon'ble Supreme Court in the matter of Grah Rakshak, Home Guards Welfare Association vs. State of Himachal Pradesh and judgment dated 04.05.2016 passed in Contempt Petition (C) No.699-700 of 2015, issued a recommendation to Principal Secretary to Government of Odisha, Home Department i.e. Respondent No.2 to pay a minimum of Rs.533/- per day to the Petitioners and other Home Guards in the State of Odisha from 10.11.2016, after taking into consideration the remuneration paid to the Constables in the State of Odisha in the lowest rank in the police personnel.

(v) The Ministry of Petroleum and Natural Gas, Government of India issued a letter dated 31.10.2017 to the Chief Minister of Odisha regarding the receipt of a petition in connection with implementation of judgment dated 04.05.2016 passed by this Hon'ble Court in Contempt Petition (c) No.699-700 of 2015 regarding payment of Home Guards' salary, for appropriate action.

(vi) The MHA directed the Chief Secretary of all the States including the State of Odisha on 11.04.2018 to implement the judgments passed by this Hon'ble Court in the matter of **Grah Rakshak**, Home Guards Welfare Association vs. State of Himachal Pradesh and Contempt Petition (c) No.699-700 of 2015, for enhancing the duty allowance of Home Guards latest by 15.09.2018.

(vii) Writ petition was filed by the petitioners on 09.05.2018.

4.4 It is further submitted by learned counsel appearing on behalf of original writ petitioners/ applicants/ Home Guards that the submission on behalf of the State that the Constables in the State at the entry level recruited as per Rule 2013 were getting Rs.7,200/- per month as per 6<sup>th</sup> Pay Commission and thereafter at the rate of Rs.9,000/- per month after the 7<sup>th</sup> Pay Commission recommendations and therefore, the Home Guards shall be entitled to the same consolidated remuneration of Rs.9,000/- per month is concerned, it is submitted that said submission is absolutely misplaced. It is submitted that as per Rule 2013, the Constables are appointed initially on contractual basis and thereafter after few years of service, they are made permanent. It is submitted that in the present case, the prayer of Home Guards for regular appointment and/or regularization of their services have been declined. It is submitted that the question is what the Constables are getting as minimum of the pay-scale/pay. It is submitted that all the aforesaid aspects were as such dealt with and considered by the Director General in his recommendation dated 10.11.2016.

4.5 It is submitted that even otherwise except the State of Orissa, all other States have complied with the directions issued by this Court in the case of **Grah Rakshak (supra)**. It is submitted that therefore all the Home Guards working in the State of Orissa are entitled to similar benefits which are being paid to the Home Guards in other States.

4.6 Now so far as the impugned judgment and order passed by the Division Bench of the High Court restricting the benefits of the DCA at Rs.533/- per day from January, 2020, is concerned, learned counsel appearing for the respective original writ petitioners – Home Guards have vehemently submitted that as such no cogent reasons have been given by the Division Bench of the High Court restricting the said benefits from January, 2020 only.

4.7 It is submitted that as such this Court passed the judgment and order in the case of **Grah Rakshak (supra)** in the year 2015. Thereafter, the Government of India, Ministry of Home Affairs as early as on 16.09.2016 requested the Chief Secretaries of all the States and Union Territories to issue necessary directions for compliance of the judgment and order of this Court in the case of **Grah Rakshak (supra)**. It is submitted that thereafter the Government of India, Ministry of Home Affairs wrote letter dated 05.10.2016 to the Secretary, Home Department, Government of Orissa for taking appropriate action regarding the complaint of the Home Guards about disobedience of the order passed by this Court regarding payment of salary to Home Guards. It is submitted that not only then even thereafter the Director General vide his recommendation dated 10.11.2016 recommended to pay DCA at Rs.533/- per day with effect from 10.11.2016. It is submitted that therefore the learned Single Judge was justified in directing to pay DCA at Rs.533/- per day with effect from 10.11.2016.

4.8 It is submitted that therefore the Division Bench of the High Court has materially erred in restricting the benefit of DCA at Rs.533/- per day from January, 2020 only.

4.9 By making above submissions, it is prayed to dismiss the appeals preferred by the State and to allow the appeals preferred by the Home Guards.



5. We have heard the learned counsel appearing on behalf of respective parties at length.

6. At the outset, the issue whether the Home Guards working in the State are entitled to DCA/Duty Allowance as per minimum of the pay to which the Police personnel of the State are entitled is not *res integra* in view of the decision of this Court in the case of **Grah Rakshak (supra)**. While declining to grant the relief either for regularization of service or for grant of regular appointments, this Court in paragraph-39 directed as under:

*“39. 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.”*

6.1 Thereafter, a further clarificatory order came to be passed by this Court in Contempt Petition (C) Nos.699-700 of 2015. This Court clarified as under:

*“So far as the present case is concerned, relief of regularization was declined, but this Court directed the payment of minimum of the pay which, as we have explained above, would mean basic pay + grade pay + dearness allowance + washing allowance.*

*However, we make it clear that the pay that is given to the petitioners will not be on a monthly basis, but will be calculated with reference to each day of work put in by the petitioners.”*

6.2 Thereafter, Government of India, Ministry of Home Affairs vide communication dated 16.09.2016 requested Chief Secretaries of all the States and Union Territories to issue necessary directions for compliance of the judgment of this Court in the case of **Grah Rakshak (supra)** and further clarificatory order. That thereafter a complaint was made on behalf of the Home Guards of the State of Orissa about disobedience of the order passed by this Court regarding payment of salary to Home Guards in the State and to that the Government of India, Ministry of Home Affairs vide communication dated 05.10.2016 addressed to the Secretary, Home Department, Government of Orissa, requested for taking appropriate action. That thereafter in the recommendation dated 10.11.2016, Director General (Fire Service, Home Guards, Civil Defence) Orissa recommended to pay to the Home Guards in the State of Orissa, DCA at Rs.533/- per day as per minimum of the pay to which the Police personnel of the State were entitled. Despite the above, the State Government did not pay the DCA as per the judgment of this Court in the case of **Grah Rakshak (supra)** and as per the further clarificatory order. However, the Home Guards in the State were being paid the DCA at Rs.7,200/- per month/Rs.9,000/- per month as being paid to the Constables appointed under Rule 2013. It is required to be noted that under Rule 2013, the Constables in the State initially are appointed on contractual basis and thereafter, after few years of service, they are made permanent. However, after they are made permanent, they are being put in the minimum of the pay-scale and therefore, the Home Guards shall be entitled to the DCA taking into consideration the minimum of the pay to which the Police personnel of the State are entitled at the time of their initial appointment on regular basis/permanent basis, after rendering their contractual services under Rule 2013. At this stage, it is required to be noted that the decision of this Court in the case of **Grah Rakshak (supra)** and further clarificatory order has also been complied with by several States like Himachal Pradesh, Punjab, Madhya Pradesh, Bihar, Chhatisgarh, Maharashtra, Kerala, Haryana, Goa, NCT of Delhi and Union Territory of Lakshadweep etc. which is evident from the following chart:

Sl. No.	Name of the State	Payment w.e.f.	Pay Rs.	Grade Pay Rs.	DA Rs. (19%)	Wash Allowance	Total amount in Rs.
1	Punjab	14.10.16	10,300/-	3,200/-	16165/-	80/-	29,565/-
2	Madhya Pradesh	14.10.16	10,300/-	3,200/-	16065/-	80/-	29,565/-
3	Bihar	18.10.16	10,300/-	3,200/-	16065/-	80/-	29,565/-
4	Chhatisgarh	20.10.16	10,300/-	3,200/-	16065/-	80/-	29,565/-
5	Maharashtra	27.10.16	10,300/-	3,200/-	16065/-	80/-	29,565/-
6	Kerala	04.03.16	-	-	-	-	18,000/- (per day 600/-)
7	Haryana	01.11.16	-	-	-	-	17,160/- (per day 572/-)
8	Himachal Pradesh	14.10.15	5,910/-	1,900/-	9294/-	30/-	17,134/-
9	Goa	01.06.17	18,000/-	-	720/-	50/-	18,770/- (p.d. 642/-)
10	Lakshadweep	14.08.18	-	-	-	-	19,260/- (p.d. 642/-)
11	New Delhi	01.01.18	18,000/-	-	1,260/-	90/-	20,550/-

6.3 Therefore, the State of Orissa cannot be permitted to now submit that as contractual Constables appointed under Rule 2013 are being paid a fixed lump sum amount at the entry level, the Home Guards after rendering 10 to 15 years of service also shall be entitled to the same fixed salary. The aforesaid stand would be just contrary to the directions issued by this Court in the case of **Grah Rakshak (supra)** and the subsequent further clarificatory order. Under the circumstances, the High Court has rightly directed to pay the DCA at Rs.533/- per day. As such we are in complete agreement with the view taken by the learned Single Judge as well as the Division Bench of the High Court. Therefore, the appeals preferred by the State to that extent deserve dismissal.

8. Now, so far as the appeals preferred by the original writ petitioners against the impugned judgment and order passed by the Division Bench of the High Court restricting the benefit of DCA at Rs.533/- per day from January, 2020, is concerned, at the outset it is required to be noted that no cogent reasons have been assigned by the Division Bench of the High Court to restrict the benefit of Rs.533/- per day from January, 2020 instead of

10.11.2016. Even otherwise, it is required to be noted that this Court as such delivered judgment in the case of **Grah Rakshak (supra)** as far back in the month of March, 2015 and a further clarificatory order was passed on 04.05.2016. Even thereafter the Director General recommended on 10.11.2016 to pay DCA at Rs.533/- per day which was in consonance with the decision of this Court in the case of **Grah Rakshak (supra)** and the subsequent clarificatory order dated 04.05.2016. Therefore, the Division Bench of the High Court is not justified in restricting the benefit of the DCA at Rs.533/- per day from January, 2020. However, at the same time considering the fact that there were 17765 Home Guards working and even as observed by the Commander General / Director General in its recommendation dated 10.11.2016, there will be a financial implication of Rs.51,78,775/- on the Government per day towards payment of DCA at Rs.293/- per day (Rs.533 – Rs.240) and the annual financial implication would come to Rs.189 Crores if they are engaged 365 days a year and taking into consideration such a huge financial burden, we restrict the benefit of DCA at Rs.533/- per day from the date of filing of the writ petition before the learned Single Judge which would be from 01.06.2018.

9. In view of the above and for the reasons stated above, the appeals preferred by the State of Orissa are hereby dismissed with the modification as under and the appeals preferred by the original writ petitioners/Home Guards are partly allowed as under.

10. The judgment and order passed by the learned Single Judge confirmed by the Division Bench directing to pay to the Home Guards in the State, DCA at Rs.533/- per day are hereby confirmed. However, it is clarified that the arrears at the rate of Rs.533/- per day shall be paid from 01.06.2018. The arrears shall be paid within a period of three months from today. It goes without saying that the Home Guards shall be entitled to the periodical rise which may be available to the Police personnel of the State and the DCA to be paid to the Home Guards be periodically increased taking into consideration the minimum of the pay to which the Police personnel of the State are entitled considering periodical increase from time to time. The present appeals stand disposed in terms of the above. There shall be no orders as to costs.