

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

...

WP(C) No.2883/2022 and connected petitions

Reserved on: 09.03.2022

Pronounced on: 06 .04.2023

WP(C) No.2883/2022, CM 7985/2022

Madan Lal and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.557/2022, CM Nos. 1810, 6343 & 6344 of 2022

Badesh Kumar and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No. 2306/2022, CM No. 6282/2022

Mohd Amin and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2347/2022, CM No. 6372/2022

Jagdev Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2377/2022, CM No. 6469/2022

Pritam Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2380/2022, CM No. 6481/2022

Mohd Amin Butt and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2428/2022, CM No. 6623/2022

Bhagwan Dass and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2481/2022, CM No. 6795/2022

Bodh Raj and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2819/2022, CM Nos. 7851/2022, and 339 and 915 of 2023

Bal Krishan and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2869/2022, CM No. 7954/2022

Ramesh Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2881/2022, CM No. 7983/2022

Ragbir Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2885/2022, CM No. 7988/2022

Gurdyal and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.2886/2022, CM No. 7997/2022 & 950/2023

Badesh Kumar and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.30/2023, CM No. 110/2023

Karan Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No.31/2023, CM No. 111 and 338 of 2023

Irshad Ahmad and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No. 154/2023, CM No. 343/2023

Ashwani Kumar and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No. 214/2023, CM No. 526/2023

Janak Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No. 276/2023, CM No. 707/2023

Rattan Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No. 278/2023, CM No. 710/2023

Hoshyar Singh and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

WP(C) No. 282/2023, CM No. 716/2023

Jagdish Chander and others Petitioner(s)

Versus

UT of J&K and othersRespondent(s)

CCP (S) No. 5/2023,

Mohd Amin and others Petitioner(s)

Versus

R. K. Goyal and othersRespondent(s)

CCP(S) No. 13/2023,

Ramesh Singh and others Petitioner(s)

Versus

Raj Kumar Goyal and othersRespondent(s)

CCP(S) No. 42/2023,

Madan Lal and others Petitioner(s)

Versus

Raj Kumar Goyal and othersRespondent(s)

For the Petitioners:

Mr. P.N.Raina, Sr. Advocate with
 Mr. J.A.Hamal, Advocate.
 Mr. Gagan Basotra, Sr. Advocate with
 Mr. Rishab Kumar Sharma, Advocate.
 Mr. M.A.Bhat, Advocate.
 Mr. Ravinder Sharma, Advocate.
 Mr. D.S.Saini, Advocate.
 Mr. Mohinder Kumar, Advocate.
 Mr. N.D.Qazi, Advocate.

For the Respondents:

Ms. Monika Kohli, Sr. AAG.
 Mr. Vishal Sharma, Deputy Solicitor General of
 India with Mr. Eishan Dadhichi, CGSC.

CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

JUDGEMENT

1. In this batch of writ petitions, the petitioners have called in question Village Defence Guard Scheme, 2022 ["VDGS-2022"] issued by the respondents vide Government Order No.287-Home of 2022 dated 14.08.2022, only to the extent it categorizes the petitioner-SPOs as Village Defence Guards and provides for payment of Rs.4,500/- per month to them. The grievance of the petitioners is that they have been engaged as SPOs under the erstwhile VDC scheme promulgated by the respondents vide Government Order No.293-Home of 1995 dated 30.09.1995 and are therefore, entitled to be treated on a par with the SPOs serving in the Police Department. It is submitted that the VDGS-2022 has deprived them of their status of SPO and also the pay and emoluments attached with and payable to the petitioners as SPOs in the Department of Police.

2. Before adverting to the grounds of challenge urged by learned counsel appearing for the petitioners and their rebuttal by Mr. Vishal Sharma, learned Deputy SGI and Ms. Monika Kohli, learned Sr. AAG, appearing for the respondents, it would be appropriate to trace out the factual antecedents leading to filing of these writ petitions.

3. The petitioners, as they claim, have been working as Special Police Officers (SPOs) and are heading different Village Defence Groups constituted by the respondents vide Government Order No.293-Home of 1995 dated 30.09.1995 ["1995 Scheme"]. As per 1995 scheme, it was clearly provided that each of the Village Defence Group would be headed by a

retired officer of the Army/CPMF/State Police and he would be issued and equipped with the higher category of weapon. The Scheme further provided that such head of the group would also be appointed and given the powers of SPO and he would be entitled to be paid the honorarium of Rs.1500/- per month. It is under this scheme of 1995 promulgated by the Government, all the petitioners came to be appointed as SPOs on the honorarium of Rs.1500/- per month which has been raised/revised from time to time. The Petitioners claim that at the time of issuance of impugned scheme they were receiving Rs.18,000/- per month as honorarium.

4. While the petitioners were working as head of their VDC Groups and performing the functions of SPOs, pressure came to be applied on them to share their honorarium with other members of the Group. Many of the petitioners, feeling aggrieved by the pressurizing tactics applied by the Police, approached this Court by way of several writ petitions. This Court, as is pleaded by the petitioners, came to the rescue of the petitioners. It is submitted that with the intervention of the Courts, the petitioners continued to perform their duties as SPOs on the payment of honorarium at the rate of Rs.18,000/- per month. However, there was growing demand from the other members of the VDGs for payment of honorarium to them on the analogy of the petitioners. The members of the VDGs also approached this Court by way of different writ petitions seeking payment of honorarium on the analogy of the petitioners.

5. These two batches of petitions, one filed by the SPOs heading the VDGs and the another by the members of such Groups, came to be finally disposed of. Insofar as the petitioners herein are concerned, the stand of the

respondents before this Court was that as per the 1995 Scheme, the SPOs were entitled to be paid honorarium and that the respondents had not pressurized the petitioners to share the honorarium with the other members of the VDGs. It is in the light of aforesaid stand taken by the respondents, the petitions filed by the petitioners came to be disposed of with a direction to the respondents not to pressurize the petitioner-SPOs to share their honorarium with the other members of the VDGs. The prayer of the petitioners for framing a policy for their regularization as SPOs in the Police Department of the Union Territory of J&K was, however, rejected by this Court on the ground that it is always the prerogative of the State/UT to frame such policy and that no such direction could be issued.

6. It is further submitted that with the aforesaid judgment of this Court, the issue should have been set at rest, however, the respondents revisited the 1995 Scheme and promulgated a new Scheme i.e. VDGS 2022 on 14.08.2022. The Scheme *inter alia* splits the Village Defence Group into two categories. The persons who shall be heading/leading/ coordinating the Village Defence Groups in the more vulnerable areas are categorized as V-1 category and have to be paid a monthly honorarium of Rs. 4500/-, whereas the other members of the VDG are put in V-II category and would be paid an honorarium at a uniform rate of Rs.4,000/- per month. The scheme deprives the petitioners of their status as SPOs and brings down their wages/honorarium from Rs.18000/- to Rs.4500/- per month. The petitioners are essentially aggrieved by this categorization made in VDG Scheme-2022, which has not only deprived the petitioners of their acquired status of SPOs but has also adversely affected their right to livelihood by bringing down

their wages from Rs.18000/- to Rs.4500/- per month. Hence these writ petitions.

7. The respondents have contested the claim of the petitioners. In the objections, it is submitted by the respondents that VDGS-2022 notified by the Government is a policy decision of the Government which cannot be looked into or interfered with by the Court in exercise of power of judicial review vested in this Court under Article 226 of the Constitution of India. It is submitted that the VDGS-2022 has superseded the 1995 Scheme and the new scheme, which is impugned in these petitions, envisages a totally new set up of the Village Defence Groups. The head of the Village Defence Group under the new scheme falls in V-1 category and does not enjoy the powers of SPO. He is performing the similar duties as are being performed by the other members of the Village Defence Group, however, for heading the group and coordinating the functions of the Village Defence Group with the police, the V-1 category member of the Village Defence Group is given extra Rs.500/- per month. It is submitted that the Scheme of 1995 as also the new VDGS-2022 envisage a voluntary participation of the villagers for their self defence and the government is under no obligation to pay any remuneration or wages to such volunteers for working as Village Defence Group, which essentially is constituted of the people and for the people of the vulnerable areas. The respondents have categorically refuted the claim of the petitioners that they had vested or acquired right to remain as SPOs and receive the honorarium payable to the SPOs of the Police Department under the VDGS-1995. The respondents in their objections have traced the history

of constitution of Village Defence Groups and the circumstances leading to supersession of VDG scheme of 1995 by the impugned scheme of 2022.

8. Head learned counsel for the parties and perused the material on record.

8 (1). The erstwhile State of Jammu and Kashmir, now the Union Territory of Jammu and Kashmir, has been facing onslaught of militancy since the year 1989. The entire Valley of Kashmir and District Doda as well as certain remote hilly areas of District Kathua and Udhampur were badly affected by the militancy in the early nineties. Despite best efforts made by the security agencies and Para Military Forces, the incidents of violence perpetrated by the militants, particularly in the remote hilly terrains of Jammu Province, could not be averted. There were few gory and diabolic incidents that took place in the remote hilly villages of Doda, Kishtwar and even in Poonch and Rajouri Districts where entire members of the families were wiped out by the militants.

9. This events led to deep introspection and thinking by the Government of India. On the experience of past during conflicts with Pakistan in the years 1965 and 1971, when with active participation of the local population living along with the borders of Jammu Division, cross border movement was effectively checked, the respondents conceptualized the creation of Village Defence Groups to supplement the efforts of the Police and Paramilitary forces in averting the incidents of violation perpetrated by the militants and anti-national elements in the vulnerable villages of Jammu Division. The Government of India came up with a detailed scheme set out

for identified vulnerable villages alongwith the borders as well as in depth areas of Jammu Division.

10. The Scheme, popularly known as Village Defence Group Scheme-1995, was promulgated by the Government vide Government Order No. Home-293 of 1995 dated 30.09.1995. It came into force with effect from 01.10.1995. The Scheme, was to be implemented in Jammu, Udhampur and Doda Districts of Jammu Division in the first instance and was to be later extended to the Districts of Rajouri and Poonch in the Jammu Division and to the entire Kashmir Valley. The Scheme identified the vulnerable villages of the identified Districts. As is provided in Paragraph 4 of the scheme, a group of 15 armed civilians of each identified village constituted the Village Defence Group. The members of this group were to work on voluntary basis and they were not entitled to any remuneration/honorarium. Paragraph 6 of the Scheme, however, provided that each of the Village Defence Group would be headed by a retired officer of Army/CPMF/State Police and would be issued with a higher category of weapon. The Scheme further envisaged that such head of the Group would be appointed and given powers of Special Police Officer (SPO) and would be entitled to be paid an honorarium of Rs. 500/- per month.

11. At this stage it is pertinent to take note of Section 18 of the Police Act, 1983, which empowers any Police Officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighborhood as Special Police Officers for such time and within such limits he may deem necessary. The Magistrate, to whom such application is made, shall unless he sees cause to the contrary, shall comply with the application.

Section 19 deals with the powers of the Special Police Officers and Section 20 provides for consequences of refusal by such person to serve as Special Police Officer. Before I proceed further, I deem it appropriate to set out the Village Defence Group Scheme 1995 as also Section 18, 19 and 20 of the Police Act, 1983, which read thus:-

“ VILLAGE DEFENCE GROUP SCHEME ”

1. The active participation of the local population in the Security of their villages and habitation, along the borders in Jammu division, as well as important installations in the vicinity was successfully tried during conflicts with Pakistan in 1965 and 1971. These Village Defence Groups supplemented efforts of the security Forces and helped in checking trans-border movement etc. during this period., For this purpose, the State Police had issued over 2,500 (.303) rifles 'along: with ammunition to the villagers, most of them ex-' servicemen, who were proficient in handling of the weapons and were prepared to work voluntarily for the defence and security of their homes and hearths. Most of these weapons have now become either been withdrawn or have now become unserviceable.

2. In the present security scenario prevailing, the Kashmir Valley, the district 'of Doda as certain hill regions of Kathua and Udhampur districts of Jammu division are affected by militant activities, inspired and supported from across the borders. In addition to this, frequent transborder movement is taking place in the plain areas of Kathua and Jammu districts, especially between river Ravi in the East and Munnawar Tawi in the West. There are also incidents of acts of sabotage in this border belt, especially targeting the infrastructural facilities. There is therefore, a need to revive the Village Defence Groups, both on the borders of Jammu and Kathua districts, as was done in 1965 and 1971, as also in Doda district and the depth areas of Kathua and Udhampur districts. It is with this intent that the Village Defence Group Scheme being put into operation.

AIM

3. The aim of the Village Defence Groups Scheme is to organise a small group of volunteer armed civilians, in the identified villages along the borders as well as in depth areas of Jammu division. This is being done iwth a view to ensure the safety and security of such villages, infrastructural installations in and around them and to check the trans-border movement.

METHODOLOGY

4. General. The Scheme will cover Kathua, Jammu, Udhampur and Doda districts of Jammu division in the first phase. Later, it would be extended to the remaining two districts of Jammu division, viz. Rajouri and Poonch, as well as Kashmir valley. The district wise number of the villages, as identified by the Deputy Commissioners and the Superintendent of Police, is given below:-

(a) **KATHUA DISTRICT.** There are 587 villages in Kathua district. Out of these, 130 border villages and 30 interior villages are required to be given weapons.

(b) **JAMMU DISTRICT.** Out of 1224 villages, 350 border villages would be covered under the Scheme.

(c) **UDHAMPUR DISTRICT.** 50 villages, in the interior areas of Dudoo-Basant-Gardh, Gool Gulab-Garh and Sungri-Chasana areas would be brought under this Scheme.

a. **DODA DISTRICT.** 100 villages. Due to peculiar and complex situation in Doda District, a general provision has been made, without actual identification. Areas to be covered under the Scheme will be identified by the Deputy Commissioner Doda, Dy. Inspector General of Police, Udhampur-Doda and Senior Supdt. Of Police, Doda in consultation with the Delta Force Commander.

The total number of villages, which are being covered under this Scheme is 660.

5. Composition. Core of the Scheme would be comprise of a group of 15 armed civilians in each village, consisting of the following categories:-

a) Those to whom weapons have been provided by the Stage Police. At an averages volunteers in one village would be given five (.303) rifles with 100 rounds each, through District Superintendents of Police. The volunteers and number of such weapons, to be allotted in a particular village, would be determined by District Magistrate/Senior Superintendent of Police concerned, keeping in view the credential of the volunteers, population of the village, its location and security requirement.

b) Persons possessing weapons with valid licenses, and

c) Persons willing to purchase weapons on their own and found eligible to be given licenses by the respective District Magistrates.

6. The members of this group would work on voluntary basis. The selection would be made carefully by the district administration, from amongst the ex-servicemen and ex-policemen, available in the village and able bodied young men,

who have proficiency to contribute their mite towards the welfare of the community and security of the village. Each of the Village Defence Group would be headed by a retired officer of the Army/CPMF/State Police. He would be issued with a higher category of weapon and would also be appointed and given powers of Special Police Officer (SPO). These SPOs would be paid an honorarium of Rs. 1,500/- per month.

7. Command and Control. As already mentioned, the Village Defence Groups would function under the supervision of the SPOs. Village Chowkidar and Lumberdar would be instructed to assist the SPO and his volunteers in carrying out their duties. Each SPO would conduct night and day patrolling in a systematic manner. For this purpose, they may also seek the assistance of the local villagers who would be duty bound to provide assistance to help to the SPOs. The District Magistrates should invoke the necessary legal provisions in this regard. The Village Defence Groups are also charged with the responsibility of protecting community installations and infrastructure facilities within the defined areas of their villages.

8. The SPOs would function under the overall supervision of respective Tehsildars and SHOs. Instructions in this behalf would be issued by the respective District Magistrates and Superintendent of Police. The SPOs are also authorised to make use of the police wireless facilities for passing and receiving messages, having a bearing of their charter of duties.

9. The District Magistrate would be responsible for dovetailing the Village Defence Groups with the existing deployment of the security forces, both on the border as well as in the depth areas, in consultation with the Security Force Commanders. This would ensure optimum utilisation of manpower and the weapons.

10. Selection of Villages. The border villages of Jammu and Kathua districts stand already identified. The selection of depth villages in Kathua, Udhampur and Doda districts would be made carefully, taking into consideration, the threat of the militants, location of the security forces. In the nearby vicinity, as well as the capacity and the willingness of the villagers to organise themselves against the militants. It may be fruitful if the identified villages are not isolated and instead, a group of such villages is taken as a unit, which would be in a position to support each other at the time of need and convert the entire segment into a defended locality. Such defended localities should, preferably, be near a security forces unit.

CONCLUSION

11. The best form of defence is self defence. The Village Defence Group Scheme is not only meant to be an exercise inculcating an attitude of self-help in security matters amongst the local population. The aim is also to supplement the ongoing efforts of the security forces in dealing with the militancy, acts

of subversion and trans-border movements. Above all, it is a manifestation of the will of the people to actively participate in the efforts to thwart the threat being posed to the nation security and integrity. The identification of the men comprising these groups, support to them and the level of their motivation, would be of utmost importance. In the ultimate analysis, the success of this Scheme would depend on the quality of the men who would form these Groups and the will behind these men.”

Section 18, 19 and 20 of the Police Act, 1947 (1927 A.D) reads thus:-

“18. Special Police officers.— When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended, and that the Police force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended, it shall be lawful for any Police officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such Police officer may require to act as Special Police officers for such time and within such limits as he shall deem necessary ; and the Magistrate to whom such application is made shall unless he see cause to the contrary comply with the application.

19. Powers of Special Police Officers.— Every special Police Officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties, and be subordinate to the same authorities as the ordinary officers of Police.

20. Refusal to serve as Special Police Officers.— If any person being appointed a Special Police Officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a [Judicial Magistrate] to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.”

12. From reading of the 1995 Scheme, in particular, para 6, 7 and 8 thereof, it becomes abundantly clear that the head of the Village Defence Group, under the Scheme, was to be appointed and given the powers of Special Police Officer (SPO); was to perform certain onerous duties and

responsibilities and was conferred with powers which the other members of the Group were not. The head of the Group to be appointed and designated as SPO, was entitled to be issued with a higher degree of weapon. The Village Defence Group was to function under the supervision of the SPO. The village Chowkidar and Numberdar were to assist the SPO and his Group Members in carrying out their duties. The SPOs, as is envisaged in Paragraph 8, who were heading their respective Groups, were to function under the overall supervision of the respective Tehsildars and Station House Officers and would receive instructions from the District Magistrates and the Superintendent of Police of the respective Districts. These SPOs were further authorized to make use of police wireless facility for passing and receiving messages having bearing on their charter of duties.

13. Having regard to the nature of duties and the responsibilities given to these SPOs the powers of the SPOs under the Police Act conferred on them, the scheme envisaged payment of honorarium at the rate of Rs.1500/- per month. It is pertinent here to take note that, apart from appointing the SPOs to head the VDGs in each of the identified village, the Government also made recruitment of thousands of SPOs to supplement the efforts of the police in maintaining law and order. These SPOs, who were primarily deployed in the Police Stations and to assist counter insurgency operations, were also receiving honorarium of Rs.1500/- per month at the relevant point of time i.e. at the time of promulgation of VDG Scheme of 1995. There should be no doubt in the mind of anyone that the 1995 Scheme treated the SPOs heading VDGs also on a par with the SPOs working in the Police Stations and other special operation groups engaged in anti-insurgency

operations. It is also not disputed that as and when the honorarium of SPOs was raised, the benefit of such increase was made available to all the SPOs irrespective of the fact whether such SPO was heading the VDG or working in the police station/special operation group. The petitioners herein are indisputably the persons who came to be appointed and conferred the powers of SPOs and were tasked to head the VDG of their respective village. Indisputably, the nature of duties required to be performed by the SPOs/heads of the VDGS and the responsibilities to be discharged by them were far onerous than those to be carried out by the other members of the VDG. True it is that the VDG was self help voluntary group constituted for self protection, however, the head of the group, as it was envisaged in the scheme, was to function as SPO and was entitled to certain privileges as are available to the SPOs under the police Act. Para 6, 7 and 8 of the Scheme when read together would clearly demonstrate the distinctive features in the nature of duties and powers which were to be carried out by the SPO/head of the Group and other members of the Group.

14. It is true that having regard to the nature of scheme and the circumstances which led to its promulgation, it would indicate that the scheme was only by way of a short term measure to meet a particular situation of the time. However, the fact remains that the law and order situation and the circumstance which lead to the framing of the scheme have not undergone such change as would require scrapping of the scheme altogether. There has been considerable change in the security scenario prevailing in the UT of J&K but the need for Village Defence Groups, which was felt in the year 1995, has not yet waned. It is not the case of the

respondents that the purpose for which the VDG Scheme of 1995 was issued has been achieved and that the Government does not wish to continue with the scheme. The VDG Scheme of 1995 has been superseded and replaced by VDGS-2022 not because of any change in the security scenario and the circumstances which led to the framing of VDG scheme 1995 but because of the litigation, which the 1995 scheme generated and the intervention made by this Court in the litigation filed by both the groups.

15. OWP No.236/2005 titled *Arjun Singh and others v. State of J&K and others*, came to be filed by 63 petitioners of Tehsil Banihal of District Doda seeking *inter alia* a direction to the respondents to sanction and release the monthly payment of honorarium to all the members of the Village Defence Groups. They prayed for an honorarium of Rs.4500/- per month at least per group. The aforesaid writ petition came to be disposed by a Bench of this Court vide order dated 11.09.2008 in the following terms:-

“.....Mr. S.C.Gupta, learned Additional Advocate General appearing for the State respondents submits the amount payable to the petitioners for their Village Defense Committees could not be so paid in the absence of its sanction by the Central Government which according to Mr. Gupta was the authority which had to pursue the amount payable to the petitioners. Learned counsel submits that the State respondents shall initiate action within a period of four weeks in requesting the Central Government to accord requisite action for payment of money to the petitioners and their Village Defense Committees.

Mr. Magoo, learned ASGI appearing for Union of India submits that on receipt of papers from the State Government, Union of India would consider the case of the petitioners and pass requisite orders for sanction of amount payable to them. Mr. Magoo assures the Court that requisite

action shall be taken by Union of India within a period of six weeks of its receiving papers in this regard by the State Government.

The statements made by learned counsel appearing for the respondents satisfies petitioners, who prayed for disposal of this writ petition on the basis of the statements of counsel for the State and Union.

In view of the statements made by learned counsel for the parties, nothing more remains to be adjudicated upon in this petition which is, accordingly, disposed of as settled in terms of the statements made by learned counsel for the respondents.

State respondents and Union of India are directed to proceed accordingly.”

16. In compliance with the directions issued by this Court in the case of Arjun Singh (*supra*), the matter was taken up by the State Government with the Ministry of Home Affairs, Government of India for issuing government order regarding payment of honorarium to all the VDC members at the rate of Rs.500/- per month. The proposal submitted by the State Government for payment of honorarium of Rs.500/- per month to all the VDC members was not acceded to by the Ministry of Home Affairs, Government of India.

17. While the government was engaged in tackling the issue of payment of honorarium to the Village Defence Group members, WP(C) No.3262/2019 titled Kewal Kumar and others v. State of J&K and others came to be filed in this Court by fifteen petitioners, who were working as SPOs in the Village Defense Groups of various villages. As a matter of fact, there were several other petitions by these SPOs seeking *inter alia* direction to the respondents not to compel them to share their honorarium with the other members of the Groups, they were heading. All the petitions were

clubbed and disposed of by this Court by a common order dated 01.06.2022 with the following directions:-

“10. A perusal of the record reveals that as per Scheme, the members of the Village Defence Group are required to work on voluntary basis and the Village Defence Group is to be headed by retired officer of Army/CPMF/State Police. The said officer would be issued with a higher category of weapon and would also be appointed and given powers of Special Police Officer (SPO). As per the Scheme, SPOs are required to be paid honorarium. More so, it is stated by the respondents that they have not pressurized the petitioners to share honorarium with the other members of Village Defence Committee.

11. In view of the stand of the respondents, nothing remains for adjudication by this Court, as such, the present petitions are disposed of with a direction to the respondents not to pressurize the petitioners who are working as SPOs of Village Defence Group to share the honorarium with other members of Village Defence Committee/Group.

12. So far as prayer of the petitioners for framing the policy for regularization of petitioners as SPOs in the Police Department of the UT is concerned, that is the prerogative of the respondents to frame such policy and no such directions can be issued.

13. Disposed of.”

18. It appears that confronted by the aforesaid two sets of litigations and the directions issued by this Court while disposing of the aforesaid writ petitions, the matter was examined by the respondents in consultation with the Ministry of Home Affairs, Government of India. Upon such consultation, the respondents came up with Village Defence Group Scheme-2022, which was promulgated by the respondents vide Government Order No.287-Home of 2022 dated 14.08.2022. The VDGS-2022, which is the subject matter of

challenge, though to a limited extent, is reproduced hereunder:-

“VILLAGE DEFENCE GUARDS SCHEME-2022

1. INTRODUCTION

The Village Defence Groups constituted in pursuance, of the Government Order No.Home-293 of 1995, dated 30.09.1995, have over the years successfully ensured the safety and security of the identified vulnerable villages and supplemented the efforts of the Security Forces in safeguarding the internal security. Keeping in view the security scenario prevailing in the Union territory of Jammu & Kashmir, more specifically, in the areas where the earlier Scheme was in operation, a need has been felt to revise the existing Scheme with a view to prevent the incidents of terrorist acts inspired and supported from across the border and to boost the security grid in the Union territory.

2. AIM

The aim of the Village Defence Guards Scheme (VDGs) is to organize a small group of volunteer armed civilians in the identified villages along the borders as well as in-depth areas of the Jammu division, with a view to instill sense of self protection and ensure the safety and security of such' villages, infrastructural installations in and around them and to check the trans-border movement. Under the Scheme, the Village Defence Guards shall be charged with the responsibility of protecting community installations and infrastructure facilities within the defined areas of their village and the Village Defence Guards would conduct night and day patrolling in a systematic manner.

3. COMPOSITION AND METHODOLOGY

I. The areas/villages, where the earlier Scheme was in operation shall be considered as “more vulnerable areas” -for the purpose of the Scheme and the arrangements made pursuant to the earlier scheme shall now be governed by the instant Scheme. Apart from these areas/villages, any other

area/village, which may be considered as “more vulnerable area” by the law enforcement agencies, necessitating application of the Scheme to such other area/village, the Government in the Home Department shall by an order declare such area/village as a “more vulnerable area” for the purpose of the instant Scheme.

II. Based on the assessment made by the law enforcement agencies, a group of armed civilians belonging to the “more vulnerable areas”, not more than 15 in number in each group, who shall be designated as “Village Defence Guards (VDGs) shall be formed. The-VDGs_ shall consist of the following categories:

- a) those in possession of a valid arms licence and to whom weapons have been provided by the J&K Police, determined by the District Magistrate/Senior Superintendent of Police concerned, keeping in view the credentials, of the volunteers’ population of the village, its location and security requirement.
- b) persons in possession of valid licence’: and weapons or willing to purchase weapons on their own.

III Each group will be called the “Village Defence Group” and shall be headed by a retired officer of the Army/CPMF/J&K Police.

IV The members of each group shall work on a voluntary basis and the selection shall be made carefully by the District administration, from amongst the Ex-servicemen and ex-policemen of the village and able bodied young men, who have proficiency in the handling of arms/ammunition and are prepared to contribute towards the welfare of the community and security of the village.

V. The Village Defence Guards (VDGs) shall be divided into the following two categories:

- a. V1 Category: The persons who shall be heading/leading/ coordinating the Village Defence Guards in the “more vulnerable areas” shall be paid Rs.4500/- per month.
- b. V2 Category: The persons who are members of the “Village Defence Group” on voluntary basis shall be paid a uniform rate of Rs.4000/per month.

All the pending claims upto 14" August, 2022 would be governed in terms of the-earlier Scheme.

4. COMMAND AND CONTROL:

I. Each Village Defence Group shall function under the supervision and direction of SP/SSP of the concerned District.

II. Each Village Defence Group would be led/coordinated by the persons bracketed in V1 category, who shall also be authorized to make use of the police wireless facilities for passing and receiving messages having a bearing on their charter of duties.

III. The Village Chowkidar and Lumberdar of the “more Vulnerable areas” shall be instructed to assist the Village Defence Groups in carrying out their duties. They may also seek the assistance of the local villagers in the discharge of their duties, who would be duty bound to provide the necessary assistance and help. The District Magistrate shall invoke the necessary legal provisions to facilitate the discharge of the duties by the Village Defence Groups.

IV. The District Magistrate concerned shall be responsible for dove-tailing the Village Defence Groups with the existing deployment of the Security Forces, both on the border as well as in the depth areas, in consultation with the Security Force Commanders, so as to ensure optimum utilization of manpower and the weapons.

5. CONCLUSION:

The Village Defence Guards Scheme is intended to inculcate an attitude of self protection in security matters amongst the local population and also to supplement the ongoing efforts of the security forces in dealing with the acts of subversion and trans-border movement. It is a manifestation of the will of the people to actively and voluntarily participate in the efforts to thwart the nefarious designs of the anti-national elements and to uphold the sovereignty and integrity of the nation.”

19. From reading of the scheme, one would notice few salient features. The scheme begins with introduction and places on record the efforts of Village Defence Groups constituted under the Village Defence Group Scheme, 1995 in supplementing the efforts of the security forces in ensuring safety and security of the identified vulnerable villages. Para 1 of the scheme

also takes note of the fact that on the basis of successful experience under the VDG Scheme of 1995, there is need to continue with the scheme after suitably revisiting the same. The aim of the VDGS-2022 remains the same as it was of the VDGS-1995. The Village Defence Group members would be called Village Defence Guards (VDGs) and shall be divided into following two categories:-

1. V1 Category: The persons who shall be heading/leading/coordinating the Village Defence Guards in the “more vulnerable areas” shall be paid Rs.4500/- per month.
2. V2 Category: The persons who are members of the “Village Defence Group” on voluntary basis shall be paid a uniform rate of Rs.4000/- per month.

20. The scheme of VDGS-2022, as is apparent from Government Order dated 14.08.2022, is in supersession of the VDGS scheme of 1995 and has been brought into operation with effect from 15.08.2022. The scheme is prospective in nature. Para 3 (I) of the scheme also provides that the arrangement made pursuant to the earlier scheme (VDGS-1995) shall now be governed by the VDGS-2022. It is in view of aforesaid stipulation in para 3(I) of the Scheme of 2022, the petitioners, who were earlier appointed as SPOs under the VDGS-1995, have been allowed to continue but governed by the new scheme. At this juncture, it is equally important to notice para 4 of the VDGS-2022, which clearly delineates the duties to be performed by V1 category member of the VDG. Though, the head of the VDG is not now designated as SPO nor the powers of SPO have been specifically conferred on him, yet the duties and responsibilities put on his shoulders are same as

were envisaged in VDGS-1995. He continues to have authority to use police wireless messages for passing and receiving messages having bearing on his charter of duties. He is responsible to instruct the village Chowkidar and Numberdar to assist the Village Defence Group in carrying out their duties. He is further authorized to seek assistance from local villagers in the discharge of his duties. More importantly the District Magistrates have been authorized to invoke necessary legal provisions to facilitate the discharge of duties by the Village Defence Groups. Para 4 of the Scheme of 2022 has been cleverly framed to give an impression that the scheme does not envisage or confer any special powers upon the head of the Village Defence Group. It is now the Village Defence Group, which shall have all such powers subject to necessary directions to be issued in this regard by the District Magistrate of the District concerned. The aim, object and purpose sought to be achieved by VDGS-2022 appears to be twofold:-

- i) To grant the benefit of remuneration to the other members of the VDG, who have been clamouring for adequate remuneration for the services they are rendering for the defence of the village and have supplemented the efforts of the security agencies;
- ii) To clip the wings of the petitioners, who, by being heads of the Village Defence Groups, have been enjoying the status of SPOs and powers and privileges attached with such office.

21. Apart from above, the Scheme of 2022 does not envisage any change or alteration in the policy of the Government. The policy of the Government continues to remain the same as was envisaged under the VDG Scheme of

1995 i.e. to set up Village Defence Groups to supplement the efforts of the Security agencies in protecting the life and liberty of the citizens from the violent attacks by the militants and nefarious activities of the anti-national elements. The Village Defence Committees/Groups cannot function and effectively discharge their duties unless the activities of the members of the Groups are co-ordinated with the local Police and the Administration. This way, the role of the head of the Group comes into focus. There are certain duties which the head of the Group is required to perform, which he cannot perform unless he is designated and appointed as Special Police Officer under the Police Act. This situation was well conceptualized and envisioned in the VDGS-1995. The VDGS-2022 also does not make any material departure from such situation. There is, however, a clever drafting of paragraph 4 of the new Scheme. Instead of designating the heads of the Groups as SPOs and conferring on them powers under Section 19 of the Police Act, the matter has been left to the District Magistrate of the concerned District, who has been authorised to invoke necessary legal provisions to facilitate the discharge of the duties. Undoubtedly, the necessary legal provisions, to which reference is made in Paragraph 4 (III) of the VDGS-2022, are the provisions of Section 18, 19 and 20 of the Police Act. The entire effort seems to have been made by the respondents to somehow denude the petitioners of their status as SPOs and bring down their remuneration from Rs. 18000/- to a fixed amount of Rs. 4500/-. While the action of the respondents to provide Rs. 4000/- per month to each of the members of the VDG is well appreciable but it is difficult for this Court to countenance the action of the respondents in bringing down the status of the

petitioners only with an aim to denude them of their legitimate dues. The action, to the extent it is challenged in these petitions, is on the face of it *mala fide*, arbitrary and utterly misconceived.

22. I am not fully convinced that under the VDGS-1995 the petitioners have a vested right either to continue as SPOs indefinitely or to have unaltered terms and conditions of their engagement. The appointment of the petitioners made under the 1995 Scheme was governed by the terms and conditions laid down in the said Scheme. Indisputably, the VDG Scheme of 1995 was issued in the exercise of executive powers of the State. Respondents are thus well within their power to withdraw, modify or alter the Scheme. If respondents, for good reasons, decide to withdraw the Scheme and dispense with the arrangement made thereunder, this Court may not find any fault with such a decision. Respondents may also be well within their right to alter the terms and conditions of appointment of the petitioners even if such alteration or modification of the terms and conditions adversely affects the petitioners. However, the respondents cannot be permitted in law to act arbitrarily and vary the terms and conditions of appointment of the petitioners to their detriment in the colourable exercise of their powers. The policy decisions of the Government, this Court is well aware, are not to be readily interfered with unless such decisions are found to be *mala fide*, arbitrary and violative of Article 14 of the Constitution of India. The respondents, being a model employer, are expected to act in a fair, just and transparent manner when it deals with the rights and privileges of its citizens guaranteed by Constitution of India.

23. In the instant case, I have carefully examined both the Schemes and

read the relevant provisions between the lines and I have found that the Scheme, insofar as it denudes the petitioners of their status as SPOs and consequently reduces their remuneration/honorarium from Rs. 18000/- per month, which was being received by them on par with the SPOs working in the Police Stations and Special Operation Groups of the J&K Police, to a sum of Rs. 4500/- per month, is not only an arbitrary and colourable exercise of powers but is actuated by *mala fide* considerations. The revisiting and revision of the earlier Scheme of 1995, as noticed above, was only to achieve twin objects; whereas the first one i.e, providing some remuneration to each of the members of the Village Defence Group is well appreciable, the second object i.e. to denude the petitioners, who are heading these Village Defence Groups, of their status of SPO and deprive them of honorarium payable to their counterparts working in the Police Department is bad, arbitrary and violative of Article 14 of the Constitution of India.

24. For the view I have taken in the given facts and circumstances of the case, it is not necessary to delve into rival contentions of the parties as to whether the petitioners had a vested and accrued right to continue with their appointment as SPOs and power and privileges attached with such appointment. The right of the petitioners to be treated justly, fairly and in non-arbitrary manner by the State is a guaranteed fundamental right envisaged under Article 14 of the Constitution of India.

25. Since the view taken by me is well fortified by the settled legal position, as such, I refrain from venturing into the discussion on the position of law debated by learned counsel appearing on both the sides.

26. In the premises, I find merit in these petitions and the same are disposed of by providing as under:-

- (i) The Village Defence Group Scheme-2022 issued by the respondents vide Government Order No. 287-Home of 2022 dated 14-08-2022, insofar as it has the effect of denuding the petitioners (heads of the Village Defence Groups) of their status as SPOs and the power and privileges conferred on them by the Village Defence Group Scheme-1995 issued by the Government vide Government Order No. Home-293 of 1995 dated 30-09-1995, is set aside and quashed.
- (ii) Writ of mandamus is issued to the respondents to treat the petitioners as SPOs having been so appointed under the Village Defence Group Scheme of 1995 with all powers and privileges, in particular, in respect to payment of wages/honorarium. They shall continue to receive remuneration as is being paid to their counterparts working in the J&K Police Department.
- (iii) The right of the members of the Village Defence Group, who have been held entitled to a monthly honorarium of Rs. 4000/- under the Village Defence Group Scheme-2022, shall remain unaffected.

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27. In these contempt petitions, the interim directions passed by this Court in the writ petitions are alleged to have been violated by the respondents. However, in view of disposal of the writ petitions, the interim orders have

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merged into the final order, and, therefore, nothing survives in these Contempt Petitions. The contempt proceedings are, accordingly, closed.

**(Sanjeev Kumar)
Judge**

JAMMU:

06. .04.2023

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes

