

GAHC030000652021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/14/2021

Lalchhuanawma Hrahsel and 754 ors.
Aizawl

VERSUS

Union of India and 5 ors.
Aizawl

Advocate for the Petitioner : Mr B Lalramenga

Advocate for the Respondent : Ms Zairemsangpuii (CGC) for R1-R2

::: B E F O R E :::

HON'BLE MR. JUSTICE NELSON SAILO

Date of Hearing & Judgment : 19.07.2023

JUDGMENT & ORDER (ORAL)

Heard B. Lalramenga, learned counsel for the petitioners, Ms. Mary Zairemsangpuii, learned CGC for the respondent Nos. 1 & 2 and Mr. L.H. Lianhrima, learned Senior Counsel assisted by Ms. Ruth Lalruatfeli, learned counsel for the respondent Nos. 4, 5 & 6.

[2.] By filing this Writ Petition, the petitioners who are 755 in numbers have prayed for a direction to the respondent authorities concerned to pay them arrear House Rent Allowance (HRA) @ 20% of the basic pay with effect from 01.09.2008 to 01.07.2017 and @ of 16% with effect from 01.07.2017 onwards. Be it stated herein that the petitioner Nos. 1 to 357 are non-teaching staff of the Mizoram University (MZU) and petitioner Nos. 358 to 548 are teaching staff of MZU. Petitioner Nos. 549 to 668 are the teaching staff of Pachhunga University College (PUC) while petitioner Nos. 669 to 755 are non-teaching staff of PUC.

[3.] The learned counsel for the petitioners submits that the teaching and non-teaching staff of the erstwhile North-Eastern Hill University (NEHU), Aizawl Campus were receiving HRA at par with the employees of the NEHU working in Shillong and Kohima, in the State of Meghalaya and Nagaland respectively. He submits that Aizawl, Shillong and Kohima were classified as 'C' category cities. However, due to certain special reasons, employees working in these three (3) cities were given HRA at par with the HRA given to cities classified as 'B-2' vide Office Memorandum dated 14.05.1993 (Annexure - 9). The learned counsel submits that in terms of the Office Memorandum dated 14.05.1993, the Vice Chancellor of NEHU through the Registrar issued a Notification dated 17.05.1994 (Annexure-11) ordering the payment of HRA/CCA at the rate admissible for 'B-2'

class cities for employees of NEHU posted at Kohima and Aizawl with effect from 01.05.1991. Since then, the employees of NEHU have been getting the benefit of HRA as is given to employees working in 'B-2' class cities.

[4.] The learned counsel submits that with the establishment of the MZU by the Mizoram University Act, 2000 (Act of 2000) which came into force with effect from 25.04.2000, all those employees serving under the erstwhile NEHU Aizawl Campus are deemed to be transferred to the services of the MZU on the same terms and conditions and with same rights and privileges as they would have got under NEHU as per Section 33 (1) of the Act of 2000. The classification of cities for HRA/CCA was reclassified vide Office Memorandum dated 29.08.2008 (Annexure-3) by which, instead of the previous classification of cities as 'A-1', 'A', 'B-1', 'B-2', 'C' and 'Un-classified', the new classification was made as 'X', 'Y' and 'Z' category. The HRA admissible for 'X' category was 30% of the basic pay plus NPA where applicable. In respect of 'Y' and 'Z' categories, the admissible HRA was 20% and 10% respectively. The MZU Finance Department had submitted a proposal to the Ministry of Human Resource Development, Govt. of India, now the Ministry of Education for payment of HRA to the employees of MZU and PUC @ 10% in terms of the Office Memorandum dated 29.08.2008 wherein, Aizawl city was classified as 'Z' category. The employees concerned otherwise had all along been enjoying HRA as given to 'B-2' category cities or 'Z' category (new)

in terms of the Office Memorandum dated 14.05.1993. Realizing the mistake, the petitioners through their Service Association approached the MZU authorities by filing representations. The representations were forwarded to the Ministry of Human Resource Development, Department of Higher Education but vide the impugned Communication dated 29.01.2017, the Ministry wrote back to the MZU that the Ministry of Finance, Department of Expenditure did not accept payment of HRA to the employees of the MZU and PUC as given to 'Y' class city rate i.e., @ 20% as per the Sixth Pay Commission (CPC). Similarly, the revised rates as per the Seventh CPC i.e., @ 16% was also declined to be paid. Aggrieved, the petitioners are before this Court.

[5.] Mr. B. Lalramenga, learned counsel submits that the Office Memorandum dated 14.05.1993 has never been recalled or cancelled by the Ministry of Finance, Department of Expenditure wherein, special consideration has been given to cities including Shillong and in fact, the same has been given effect to with extensions from time to time and two (2) of such extensions being vide Office Memorandum dated 18.11.2004 (Annexure - 12) and Office Memorandum dated 16.03.2005 (Annexure - 13). The learned counsel submits that by virtue of Section 33(1) of the Mizoram University Act, 2000, the benefits received by the employees while under the erstwhile NEHU was carried forward and therefore, in the absence of any specific notification recalling such benefit, the

petitioners cannot be denied HRA as given to 'B-2' class cities or 'Y' category after reclassification.

[6.] The learned counsel further submits that the members of the Non-Teaching Staff Association, NEHU Campus, Kohima, having been deprived of the HRA as admissible to 'B-2' cities had approached this Court in the Kohima Bench through Civil Rule No. 104(K)/1994 and this Court vide Judgment dated 22.03.1996, directed that the petitioners therein be given HRA as admissible to those stationed at 'B-2' cities. To come to such a conclusion, this Court had referred to the Office Memorandum dated 14.05.1993 as well as the decision rendered by the Central Administrative Tribunal (CAT) by which HRA was granted as per the admissible rate of 'B-2' cities. The decision of CAT was challenged before the Supreme Court through Civil Appeal No. 2705/1991 and the Supreme Court vide Judgment dated 18.02.1993 upheld the decision of the CAT. The learned counsel submits that the employees of the Postal Department and other Central Government Departments had also approached the CAT, Guwahati Bench through O.A No. 381/2000 claiming payment of HRA at par with cities categorized as 'B-2' and the Tribunal vide its Judgment dated 12.04.2002 allowed the application and directed that the applicants to be given HRA at the rate prescribed for 'B-2' cities. The learned counsel submits that the Judgment of the CAT was again put to challenge before the Apex Court and the

Apex Court upheld the Judgment of the CAT. The learned counsel therefore submits that the present petitioners are also similarly situated and therefore, a similar direction may be given to the respondent authorities for paying them HRA at par with those who are getting HRA under 'B-2' category cities or 'Y' category cities.

[7.] The learned counsel submits that besides the impugned Communication dated 29.01.2019, the Ministry of Human Resource Development, Department of Higher Education vide Communication dated 11.12.2019 (Annexure - 12) had also taken the stand in denying HRA benefit as claimed by the petitioners to the effect that the HRA benefit as claimed by the petitioners was only limited to the applicants who had gone to the Court and therefore could not be extended to those who had not approached the Court. The learned counsel submits that the said reason given for rejection of the claim of the petitioners cannot be sustained in view of the fact that the petitioners are similarly situated in all respect and that they had been getting such benefit up to the year 2008. The Apex Court in the case of *State of Karnataka & Ors. -Vs- C. Lalitha*, reported in (2006) 2 SCC 747, in the given facts of that case held that service jurisprudence evolved by the Supreme Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court, it would not mean that persons similarly situated should be

treated differently. The learned counsel thus submits that the impugned Communications rejecting the prayer of the petitioners should be set aside and a direction be issued to the respondent authorities concerned to grant the HRA benefit as prayed for.

[8.] Ms. Zairemsangpuii, learned CGC submits that in her capacity as Central Government Counsel, she had accepted notice on behalf of the respondent Nos. 1 & 2 and despite having sent several communications to the respondent Nos. 1 & 2 by enclosing a copy of the Writ Petition, she has not received any para-wise comments or instructions to convey their stand. Therefore, she is not in a position to file an affidavit and take a stand.

[9.] Mr. L.H. Lianhrima, learned Senior Counsel relying upon the affidavit-in-opposition filed by the MZU dated 22.06.2022 submits that the MZU had forwarded the representations submitted by the petitioners Service Association to the Ministry of Human Resource Development, Department of Higher Education for their consideration, taking note of the fact that the Office Memorandum dated 14.05.1993 gave special consideration for employees residing in the city of Shillong, Kohima and Aizawl and also in view of Section 33(1) of the Act of 2000 but the Ministry vide the impugned orders have not accepted the prayer for granting HRA at par with 'B-2' class cities or 'Y' class

cities. Such being the position, the University is not in a position to grant the benefit to the petitioners in absence of appropriate sanction from the Ministry concerned.

[10.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. As may be seen, the claim made by the petitioners is that they are entitled to HRA @ 20% with effect from 01.09.2008 up to 01.07.2017 and @ 16% with effect from 01.07.2017 onwards. The basis for making such a claim is related to the Office Memorandum dated 14.05.1993 by which the Govt. of India in the Ministry of Finance, Department of Expenditure had permitted payment of HRA/CCA to Central Government Employees stationed at Shillong and in hill station at the rate given to 'B-2' class cities on account of special reasons. In view of the Office Memorandum, the Vice Chancellor of NEHU had also issued a circular granting HRA to employees stationed at Aizawl and Kohima at the rates given to 'B-2' class cities.

[11.] With the enactment of the Act of 2000, the employees of the NEHU Campus at Aizawl and the PUC were merged with the MZU after giving option and under Section 33(1) of the Act of 2000, it is provided that every person who, immediately before the commencement of the Act of 2000 is holding or

discharging the duties of any post or office in connection with the affairs of the NEHU in any area which on that date falls within the State of Mizoram shall be deemed to have been transferred to the service of MZU on the same terms and conditions and with the same rights and privileges as regards to pension, gratuity, provident fund and other matters as the employee would have received under NEHU. Therefore, the employees of the NEHU admittedly continue to enjoy the benefit which they received under NEHU even after the establishment of the MZU. The benefit of the Office Memorandum dated 14.05.1993 also stood extended from time to time vide Office Memorandums dated 18.11.2004, 16.03.2005, 07.01.2009 and 04.03.2011 amongst others. No material has been placed before this Court by which the benefit granted vide Office Memorandum dated 14.05.1993 has been recalled. Besides this, the various decisions rendered by CAT as well as the Coordinate Bench of this Court shows that the benefit of granting HRA at par with 'B-2' category cities or 'Y' category cities has been allowed. The issue also was taken up before the Apex Court and as already stated, the Apex Court had decline to interfere with the decision of the CAT in granting such benefit.

[12.] A perusal of the Communication dated 29.01.2019 impugned by the petitioners does not disclose any reason as to why the Ministry of Finance, Department of Expenditure is not agreeable to allow HRA to 'Y' class cities rate

to the petitioners. The impugned Communication dated 11.12.2019 provides that HRA is granted at 'Y' class cities rate to the employees concerned in view of the various Court orders in this regard and that the same cannot be applied to those who do not have the benefit of the Court orders. The stand taken in view of the Apex Court decision in *State of Karnataka & Ors. -Vs- C. Lalitha* (supra) cannot be applied and accepted. The further contention made in the said communication is that there is no provision in the Act of 2000 or the North-Eastern Hill University Act, 1973 providing payment of HRA at different rates compared to others. However, the fact remains that the Office Memorandum dated 14.05.1993 has clearly given such benefit on account of special reasons though not cited. The benefit granted as already stated herein above was extended from time to time and has not been withdrawn or recalled. Therefore, the impugned Communications dated 29.01.2019 and 11.12.2019, in the considered view of this Court cannot be sustained and are accordingly set aside.

[13.] The petitioners are thus found to be entitled to be paid HRA @ 20% with effect from 01.09.2008 to 30.06.2017 and thereafter, @ 16% with effect from 01.07.2017 onwards. The respondent MZU shall make the necessary calculation of arrears to be paid in respect of each of the individual teaching or non-teaching staff of MZU and PUC within a period of six (6) weeks from the date of receipt of a certified copy of this Order and thereafter, forward the same

to the respondent Nos. 1 & 2 for sanction and arrangement of fund as required. The respondent Nos. 1 & 2 shall accord necessary sanction and arrange the fund within a period of three (3) months from the date of receipt of the communication from the MZU.

[14.] Before parting with the records, the submission made by the learned CGC is taken note of. It is unfortunate that the respondent authorities concerned have failed to instruct their counsel with proper materials to project their stand. Without instructing their counsel, the Department concerned cannot expect their counsel to defend their cause effectively. It is expected of the parties concerned to be proactive since the Court in order to dispense justice requires all the assistance it can get and importantly from parties such as the Union of India. Be that as it may, in the present case, the impugned documents have spoken for themselves and this Court having found them to be not sustainable has interfered with it.

[15.] With the above observations and directions, the writ petition stands disposed of. No cost.

JUDGE