

Court No. - 8

Case :- WRIT - A No. - 17111 of 2016

Petitioner :- Prabhat Kumar Srivastava

Respondent :- State Of Up Thru Prin.Secy.Deptt.Of
Sarvajanki Udyam And Anr.

Counsel for Petitioner :- Opendra Singh, Jitendra
Singh, Purnima Singh, Rajesh Kumar Singh

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard learned counsel for the petitioner, learned Standing Counsel for the State respondent and perused the material brought on record.

2. The present writ petition has been filed by the petitioner challenging the order dated 27.05.2016, whereby the directions were issued for recovery of the amount paid in excess towards House Rent Allowance mainly on the ground that the husband and wife were the Government Servant and were staying in the same accommodation.

3. The counsel for the petitioner argues that the petitioner and his wife both were the Government Servant posted in the same Department and were staying in the same accommodation, however, on account of inadvertence, both of them were paid House Rent Allowance to which prima facie they were not entitled. On 20.07.2002, the petitioner was served with a show cause notice

highlighting the grievance that the House Rent Allowance was being paid in excess from what was prescribed. The petitioner gave a reply to the said show cause notice on 23.07.2002 and took a defence that issue was subject matter of an interim order dated 16.12.1997 and as such, the Government Order should not be made applicable to the petitioner and the petitioner should be paid House Rent Allowance. Subsequently, on 11.02.2015 a Government Order was issued wherein certain modifications were made in respect of payment of House Rent Allowances to the Government Servants, who were married and were staying in the same house. The same Government Order prescribes that the same would have prospective effect and the earlier matters would not be reviewed/revisited. In view of the clarifications and the Government Order dated 11.02.2015, an order came to be passed on 27.05.2016 demanding the House Rent Allowance paid in excess upto 10.02.2015 i.e. the date from which new system came in force. A perusal of the Government Order dated 11.02.2015 itself indicates that the same was from prospective effect and not retrospective.

4. The counsel for the petitioner has placed reliance on the Division Bench judgment of this Court in the case of

Dr. Krishna Swaroop Anandi Versus State of U.P. and others, wherein the Division Bench of this Court has considered the fact that the Court had held that the payment of H.R.A. could not be recovered, the observations made by the High Court are as under:-

"Now remains other part of the order dated 10th November, 2000 by which direction has been issued for recovery of house rent allowance of the amount which has already been paid to the petitioner. From the facts, which have been brought on the record, it is clear that it was the respondents, who have paid the house rent allowance to the petitioner after receiving a representation from the petitioner for payment of house rent allowance and the payment of house rent allowance was directed to be stopped only by the order dated 10th November, 2000. In facts of the present case, the petitioner cannot be said to have any role for payment of house rent allowance to him in addition to the house rent allowance paid to the petitioner's wife, we are of the view that it is not a fit case where the house rent allowance already paid to the petitioner be recovered. Thus the part of the order dated 10th November, 2000 by which direction has been issued for taking steps for recovery of the house rent allowance already paid is set-aside, but the rest of the order is maintained. "

5. In the light of the said, submission of the counsel for the petitioner is that the amount paid prior to the show cause notice at least cannot be recovered as the petitioner had no role to play in getting the amount in his account. The said submission of the counsel for the petitioner merits rejection for the reasons more than one. The payment of the House Rent Allowance to the petitioner was in excess to the limits specified at least till 11.02.2015, as such, no right accrued in favour of the petitioner to retain the amount in excess. The judgment in the case of Dr. Krishna Swaroop Anandi would be of no help to the petitioner as the relevant portion as extracted

above did not decide any issue and was confined to the fact of that case and cannot be termed as laying down a binding precedent.

6. For all the reasons recorded above, no good ground for interference is made out. There is no right accrued in favour of the petitioner to retain an amount to which he is not entitled.

7. The writ petition lacks merits and is accordingly dismissed.

Order Date :- 8.12.2023

Arun