

GAHC010016442015



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

Case No. : WP(C)/3740/2015

VIRENDRA KUMAR KATIYAR
S/O LT. HORI LAL KATIYAR PRESENT RESIDENT OF H. NO. 160,
JAYANAGAR, NEAR SIX MILE, GUWAHATI, DIST. KAMRUP M, ASSAM, PIN
- 781022.

VERSUS

THE UNION OF INDIA and 4 ORS
REP. BY SECRETARY, MIINISTRY OF ROAD TRANSPORT AND HIGHWAYS
GOVT. OF INDIA, NEW DELHI.

2:THE MEMBER ADMINISTRATION
NATIONAL HIGH WAYS AUTHORITY OF INDIA G-5 AND 6
SECTOR -10
DWARKA NEW DELHI- 110075.

3:THE CHIEF GENERAL MANAGER
FA NATIONAL HIGHWAYS AUTHORITY OF INDIA
G-5 AND 6
SECTOR-10
DWARKA
NEW DELHI- 110075.

4:THE CHIEF GENERAL MANAGER T
REGIONAL OFFICE GUWAHATI NEDFI HOUSE
4TH FLOOR
G.S. ROAD
DISPUR
GUWAHATI- 781006.

5:THE PROJECT DIRECTOR

PIU NAGAON
NATIONAL HIGHWAYS OF AUTHORITY OF INDIA
SANKAR MISSION ROAD
PANIGAON
1ST FLOOR
OPPOSITE TO I.T.I. NAGAON- 782001

Advocate for the Petitioner : MS.S D SAIKIA, MR.D K SAIKIA

Advocate for the Respondent : MR.C BARUAHR3, MR.S C KEYAL,SC, NHAI,MR.B
DEKA,ASSTT.S.G.I.(R1 & 2)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

20.08.2024

The instant petition under Article 226 of the Constitution of India has been filed for the following relief:

“It is therefore, Most respectfully prayed that Your Lordships would be pleased to call for the records, admit this petition by issuing a Rule calling upon the respondents to show cause as to why writ of Mandamus should not be issued/declaring the action of the respondents illegal and show cause as to why the earlier additional House Rent Allowance paid from January 2011 to May, 2011 and stopped without any notice now why not allow the additional House Rent Allowance in favour of the petitioner as Central Government Employee who is presently working at NHAI in NE region and as per office Memorandum No. 11016/1/E. 11 (B)/84 dated 29.03.1984 (Annexure J) and subsequent office Memorandum No. 2 (19)/E. II (B)/2008 dated 02.01.2009 (Annexure K) the petitioner is entitle the additional benefit of House Rent Allowance his family keeping in rent house at Lucknow, outside the NE region and as to why allow the same benefit to other 3 (three) persons working under the NHAI Regional Office, Guwahati following aforesaid office memorandum and directing the respondents to allow the additional House Rent Allowance in favour of the petitioner with reference the aforesaid office memorandum from the month of June 2011 till date and release the deducted amount or cause or

causes being shown and on hearing the parties be pleased to make the Rule absolute and/or pleased to pass any such further or other order or orders as your Lordships may deem fit and proper."

2. As per the facts projected, the petitioner was working in the Public Works Department in the State of Arunachal Pradesh. In July, 2003, he was deputed to the Uttar Pradesh Rajya Krishi Utpadan Parishad for a period of 3 years and accordingly, the petitioner with his family had shifted to Lucknow. The deputation was over and in July, 2006, though the petitioner had come back and joined at Arunachal Pradesh, his family continued to stay at Lucknow. On 20.01.2011, the petitioner was inducted in the National Highway Authority of India (NHAI) and was posted at Lumding in the State of Assam.

3. It is the case of the petitioner that for about 5 months till 31.05.2011, the additional House Rent was paid for accommodating the family of the petitioner at Lucknow. However, the same was stopped and a show cause notice was issued as to why the amount should not be recovered. It is on this premises, the instant petition has been filed.

4. I have heard Ms. S.D. Saikia, the learned counsel for the petitioner. I have also heard Shri S.C. Keyal as well as Shri C. Baruah, learned counsel appearing for the NHAI.

5. Ms. Saikia, the learned counsel for the petitioner has submitted that it is an admitted fact that the family of the petitioner is residing at Lucknow and the petitioner is posted in the North Eastern Region. It is submitted that the additional House Rent was rightly released to the petitioner for the period from January, 2011 to May, 2011 which was abruptly stopped and the move to recover the amount is without any jurisdiction. It is submitted that there is a

communication dated 25.04.2014 by the NHAH recommending such payment. She has also relied upon a judgment of this Court dated 22.04.2015 passed in WP(C)/6816/2013 [***Sunil Kr. Das vs. the Union of India & Ors.***]. The learned counsel accordingly submits that appropriate direction be issued for interfering with the action to recover the additional House Rent and also further direction be issued for payment of the same including the arrears.

6. *Per contra*, the learned counsel for the NHAH by referring to the affidavit-in-opposition filed on 16.09.2015 has submitted that the writ petition has been instituted on an erroneous presumption. It is submitted that when the petitioner had joined the NHAH on 20.01.2011, he was an employee under the PWD, Arunachal Pradesh. The Last Pay Certificate (LPC) of the petitioner which is the relevant consideration is of the State of Arunachal Pradesh. It is strenuously contended that though the petitioner was deputed to an organisation in the State of Uttar Pradesh in the year 2003, such deputation was over in the year 2006 when the petitioner had come back and rejoined at Arunachal Pradesh. It is also contended that in any case, the substantive posting was in the State of Arunachal Pradesh and cannot be construed to be a posting at Lucknow which is outside the N.E. region. As regards the case law relied upon, the learned counsel for the respondents has submitted that the aforesaid case would not come to the aid of the petitioner inasmuch as the O.M. dated 02.01.2009 was held to be inapplicable for the petitioner in that case and only the recovery of the payment made was interfered with. The learned counsel has fairly submitted that even in this case, the respondent authorities would not insist upon the recovery for the payment made for about 5 months.

7. Reliance has also been placed upon a case of the Hon'ble Delhi High Court namely, ***S.I. (M) Shankar Lal vs. Union of India*** reported in **2001 0**

Supreme (Del) 1091.

- 8.** The rival submissions have been duly considered.
- 9.** The claim of the petitioner would relate back to an Office Memorandum dated 02.01.2009 which provides for granting additional House Rent for persons who are posted in the North Eastern Region from any other part of the Country. In the instant case, it is not at all disputed that the substantive appointment of the petitioner before he joined the NHAI was with the Public Works Department of the State of Arunachal Pradesh. Though for a short stint of 3 (three) years, he was deputed to an organisation in the State of Uttar Pradesh, such deputation was over way back in the year 2006 whereafter he had come back and rejoined the Public Works Department in the State of Arunachal Pradesh and continued thereafter. The induction of the petitioner in the NHAI was only in January, 2011 in which the Last Pay Certificate was taken into consideration which was from the PWD, Arunachal Pradesh. Under those conditions, the claim of the petitioner based upon the O.M. dated 02.01.2009 appears to be misconstrued. Unless an incumbent can show that he has been posted in the N.E. region from a previous posting outside the region, the entitlement for additional House Rent cannot be countenanced.
- 10.** As rightly pointed out by the learned counsel for the respondents, the order dated 22.04.2015, passed in WP(C)/6816/2013 would not come to the aid of the petitioner as even in that case, the incumbent was held not to be entitled to additional House Rent. The communication dated 25.04.2014 by which a recommendation was made would not vest any right to the petitioner as the right has to be examined from the point of the objective of the Office Memorandum holding the field.

11. In view of the aforesaid facts and circumstances, this Court is of the opinion that no relief can be granted to the petitioner and accordingly the writ petition is dismissed.

12. It is however made clear that no recovery should be made from the petitioner regarding the additional House Rent paid for the period 20.01.2011 to 31.05.2011.

JUDGE

Comparing Assistant