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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1853 OF 1993

Food Corporation of India's Employees ...Petitioners
Association and Ors.

Versus

Food Corporation of India & Ors. ...Respondents

Ms. Manisha Devkar, with Mr. Shankar Katkar, i/b Mr. S.S.
Pakale, for the Petitioners.
Mr. A.D. Kango for the Respondents.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.
DATED: 8th September 2017**

ORAL JUDGMENT (Per A.S. Oka, J.)

1. Called out for final hearing. The first Petitioner in this Petition under Article 226 of the Constitution of India is a registered Trade Union of Employees of the Food Corporation of India (first Respondent) and the second to eight Petitioners were employees of the first Respondent Corporation. The details of the employment of the second to eight Petitioners such as the dates of their respective appointments and place of work have been set out in the

chart annexed as Exhibit "A" to the Petition.

2. According to the information disclosed in Exhibit "A", the second to eight Petitioners have been appointed during the period between 8th June 1970 to 31st March 1978. Therefore, now all of them must have superannuated.

3. The case made out in the Petition is that all of them were being paid House Rent Allowance (HRA) as a part of service conditions along with other allowances. It is contended that HRA forms a part of their basic wages. It is stated in the Petition that the spouses of second to eight Petitioners were in government employment, who were provided staff quarters as part of their service conditions. In the Petition, it is disclosed that considering the nature of work of their respective spouses, they were required to stay in the staff quarters. It is submitted that the substantial amount was being deducted from the pay of their spouses on account of grant of service quarters.

4. In paragraph 11 of the Petition, a case is made out that

at the relevant time, HRA was made payable to the employees of the first Respondent without requiring them to furnish any rent receipts or declaration of the fact that their spouses are not holding any service quarters from their employers. Attention of the Court is invited to the circulars dated 21st March and 3rd May 1993 issued by the first Respondent. The said circulars record that in those cases accommodation has been allotted to the spouses of employees of the first Respondent by the Central Government, State Government or any autonomous body, public sector undertakings or some government organisation, the concerned employees of the first Respondent will not be entitled to draw HRA. Circular dated 3rd May 1993 is issued by the competent authority directing the officers of the first Respondent obtain a declaration from its employees to the effect that no government residential quarter is allotted to him or her or to his / her spouse.

5. This Petition is filed on the basis of an apprehension that on the basis of the said circulars, recovery of HRA already paid to second to eight Petitioners would be made.

In fact it is pointed out that recovery was initiated. This Writ Petition was admitted by order dated 26th October 1993. On that day an Interim order was passed in the following terms.

“Rule.

Interim order restraining the respondents from making any recovery in respect of the House Rent Allowance which has already been paid to the petitioners. The respondents shall maintain an employeewise account of the House Rent Allowance payable in future as per the present practice and in the event of the petitioners succeeding in the petition, the amounts to the credit of each employee shall be paid together with such interest as may be directed by the Court at the time of hearing. In the event of any employee affected by the impugned circular, retiring during the pendency of the petition, liberty to the petitioners to apply in connection with the payment of his / her retirement benefits.

Certified copy expedited.”

6. The Petition is opposed by the first Respondent by filing an Affidavit in Reply of Mr. K. Udayabhanu, Deputy Manager, (Personnel).

7. The learned counsel appearing for the Petitioner

submitted that the service conditions which were applicable to the second to eight Petitioners on the date of which they were granted employment cannot be altered to their prejudice. The submission is that HRA was an integral part of the wages payable to the said Petitioners and, therefore, on the basis of subsequent circulars, the Petitioners cannot be deprived of HRA. The submission of the learned counsel appearing for the Respondents is that the circular dated 13th November 1987 issued by the first Respondent makes it very clear that HRA cannot be paid to the employees of the first Respondent who reside in a house allotted to his or her spouse by the first Respondent or the State / Central Government. He also relied upon the circular dated 22nd September 1986, which records that in all cases where there are no specific provisions in the Food Corporation Act, 1964 or Rules and Regulations made thereunder, the first Respondent shall follow the Central Government Rules and Regulations. The learned counsel appearing for the Respondents placed reliance on the Rules and Regulations with regard to the payment of House Rent Allowance. He has placed reliance on the FCI (Staff) Regulations 1971 (**“the**

said Regulations”). He would, therefore, urge that the first Respondent was justified in initiating recovery proceedings and stopping the payment of HRA to the concerned Petitioners.

8. We have considered the submissions. The basic issue is what were the precise terms and conditions of service of the respective Petitioners when they were employed on the respective dates of their appointment. The terms and conditions of service on which the second to eight Petitioners were appointed have not been placed on record by the first Respondent along with the Affidavit or along with additional compilation tendered today. There is a specific averment in paragraph 11 of the Petition that HRA was to be paid to the employees of the first Respondent without requiring them to furnish any rent receipts or declaration to the effect that their spouses are not holding any service quarters allotted by their respective employers. Though there is a denial in the reply, nothing is placed on record to show that such a declaration was required to be signed by second to eight Petitioners.

9. The Circular dated 2nd March 1993 records thus :-

“Acknowledgement of having seen the circular be obtained from individual officers / staff by the controlling officers and payment of HRA be released only after obtaining the Certificate that no residential accommodation has been allotted to the spouses of the FCI employee.

Where accommodation has been allotted to the spouse of by the FCI employee certificate be given indicating the individual date from which accommodation has been allotted to regularise the payment of HRA.”

10. The second impugned circular dated 3rd May 1993 reads thus:-

“A few cases where employees have been drawing House Rent Allowance by wilful and deliberate suppression of the fact of allotment of Government residential quarters to them or their spouse had come to light recently. The payment of HRA to such employees is not entitled as per the standing instructions.

As ordered by the competent authority, you are requested to obtain declaration from all the employees working in your district / Branch to the effect that no Government residential quarter is allotted to him / her or his / her spouse so as to entitled him / her for drawing H.R.A.

The aforesaid declaration may be furnished to this office immediately from all the employees in consultation with Finance Division and ensure that no H.R.A. is drawn illegitimately by employees.”

11. The second impugned circular dated 3rd May 1993 calls upon higher officers of the first Respondent to obtain declarations from the employees as mentioned thereunder.

12. As stated earlier, second to eight Petitioners must have superannuated by this time. Only on the basis of the impugned circulars, the Respondent cannot initiate any recovery proceedings against second to eight Petitioners for recovery of HRA paid to them till the date of filing of the Petition and for further period till the dates of their respective superannuation. If the first Respondent intends to recover any amount paid to the said Petitioners by way of HRA, the first Respondent will have to adopt due process of law. It follows that the first Respondent will have to give an opportunity of being heard to second to eight Petitioners before proceeding to recover the amounts paid to them by way of HRA.

13. The second to eight Petitioners were appointed on different dates as specified in Exhibit "A". In case of each of Petitioners, the service conditions with which they were governed will have to be ascertained.

14. Suffice to state that only on the basis of impugned circulars without taking recourse to the due process of law, no recovery can be made from the said Petitioners.

15. Hence we dispose of the Petition by passing following order:-

- (a) We restrain the Respondents from making recovery of any amounts paid to the second to eight Petitioners by way of House Rent Allowance till the date of filing of this Petition and thereafter without following due process of law;
- (b) Needless to add that due process of law which is to be followed by the Respondents will necessarily include an opportunity of being heard

to second to eight Petitioners;

- (c) Whether the Respondents are entitled to recover amounts paid to the said Petitioners by way of HRA depends upon facts and circumstances of each case and all contentions in that behalf of the parties are kept open.
- (d) We make it clear that except for the direction in Clause (b) above, we have made no adjudication on the nature of due process of law which is required to be adopted by the Respondents;
- (e) Rule is made absolute in above terms with no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)