

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2018

CORAM :

The Hon'ble Mrs.V.K.TAHILRAMANI, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.DURAI SWAMY

W.P. No.20820 of 2018
and W.M.P.Nos.24434 and 24435 of 2018

M.Pounidame .. Petitioner

-vs-

1.The Director,
JIPMER, Puducherry-605006.

2.The Accounts Officer,
JIPMER, Puducherry-605 006.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari to call upon the records pertaining to order dated 08.07.2014 in O.A.No.109 of 2013 passed by the Central Administrative Tribunal, Madras Bench, and the order dated 30.08.2012 of the 2nd respondent, quash the same as ultravires.

For Petitioner : Mr.M.Velmurugan

O R D E R

(Order of the Court made by The Hon'ble Chief Justice)

Heard learned counsel for the petitioner.

2.The petitioner has approached this Court against the order of Central Administrative Tribunal, Madras Bench, Madras, dated 8th July, 2014 passed in O.A.No.109 of 2013. By the said order, the Central Administrative Tribunal dismissed the O.A. preferred by the petitioner. The OA was directed against the notice and order of the respondents stating that in view of the Rules, the petitioner was not entitled to House Rent Allowance (HRA) and hence, they would deduct HRA already paid to her in 13 instalments.

3.The facts briefly stated are as under:

The petitioner is working as a Lab Technician in Department of Pathology under the first respondent, Jawaharlal Institute of Post Graduate Medical Foundation and Research, Puducherry (JIPMER). On 21.03.2003, she got married. Her husband is also working in the same institution. Thereafter, there were some differences between the husband and wife and the husband of the petitioner filed divorce petition in the year 2005. The divorce petition came to be dismissed on 25.02.2008.

4.It is the contention of the petitioner that soon after the marriage, as there were differences between her and her husband, from 02.10.2003 she started residing separately in rented accommodation and she claimed and got HRA. Thereafter, in 2011, her husband informed respondent no.1 that she is claiming HRA and she is not entitled to the same. Pursuant thereto, the petitioner first received a notice, in which it was stated that as per Rules, she is not entitled to HRA and hence, the HRA, which was claimed by her, would be deducted from her salary. The petitioner gave a representation against the said notice, which came to be rejected. Thereafter, the final order was passed. The petitioner then preferred the above mentioned OA before the Central Administrative Tribunal with the above mentioned reliefs, which, as stated earlier, came to be dismissed.

5.The case of the petitioner is that though she got married on 21.03.2003 to her husband who was also working with respondent No.1, thereafter she left the house on 02.10.2003 and she was separately residing from her husband. It is submitted that in such case, as she was living in a separate rented accommodation, she should get HRA and no HRA, granted earlier, ought to have been deducted.

6.The main reason for the Tribunal to dismiss the OA was Rule 5(c)(iii) of H.R.A.-General Rules and Orders. Rule 5(c)(iii) reads as under:

5.Conditions for Drawal of House Rent Allowance.

- (a) ...
- (b) ...
- (c) A Government servant shall not be entitled to House Rent Allowance, if -
 - i. he shares Government accommodation allotted rent-free to another Government servant; or
 - ii. he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an Autonomous Public Undertaking or semi-Government

Organization such as a Municipality, Port Trust, Nationalized Banks, Life Insurance Corporation of India, etc.

iii. his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an Autonomous Public Undertaking or semi-Government Organization such as Municipality, Port Trust, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her.

7. Admittedly, the petitioner is residing in the same station as her husband and her husband has been allotted accommodation by the respondents in the same station as her. Rule 5(c)(iii) clearly says that if the wife or husband has been allotted accommodation at the same station by the Government or autonomous public undertaking, etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her, he/she would not be entitled to HRA.

8. No doubt, the petitioner has been residing separately from her husband. But, the fact remains that the marriage has not been dissolved. In view of the fact that divorce petition has been dismissed on 25.02.2008, the petitioner and her husband still have the status of husband and wife. The husband of the petitioner is also working with respondent No.1 and he is admittedly living in accommodation provided by respondent no.1. In such case, the petitioner will not be entitled to any separate HRA, even though she may be residing separately from her husband, in a rented accommodation.

9. In view of the above mentioned Rule, the petitioner would not be entitled to HRA. Thus, the order of the respondents that the petitioner is not entitled to HRA and hence, the HRA already paid to the petitioner has to be recovered cannot be faulted. In view of the fact that the marriage still subsists, Rule 5(c)(iii) would apply and the petitioner will not be entitled to HRA.

In view of the above, no case is made out for interference. Writ petition is dismissed. Consequently, W.M.P.Nos.24434 and 24435 of 2018 also stand dismissed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sra

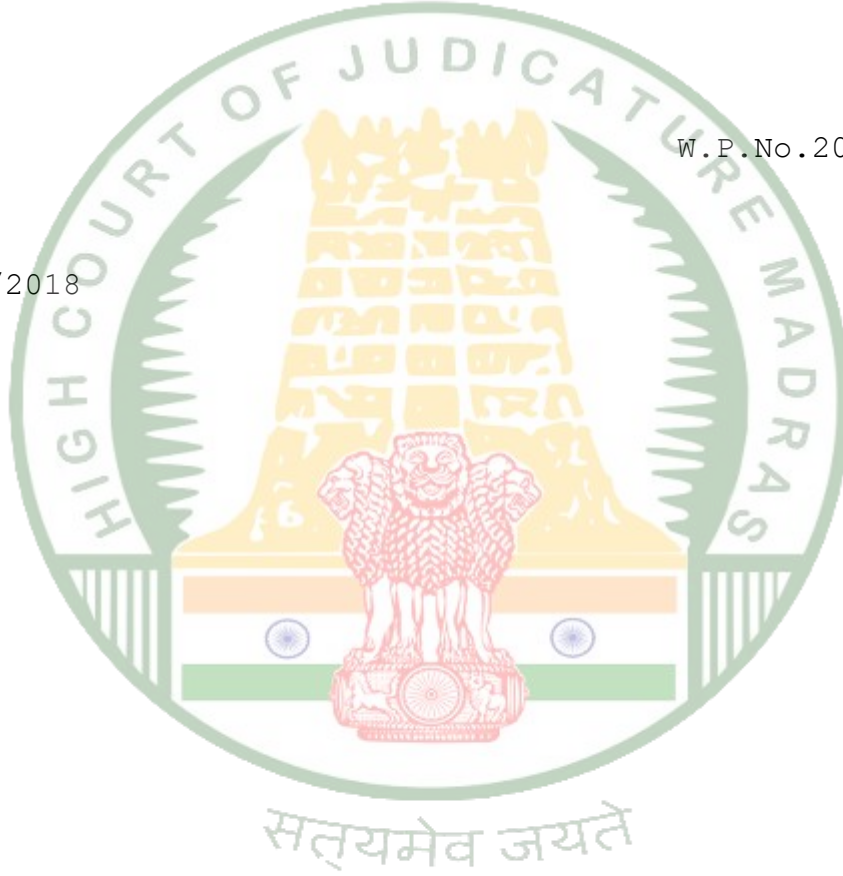
To

1.The Director,
JIPMER, Puducherry-605006.

2.The Accounts Officer,
JIPMER, Puducherry-605 006.

W.P.No.20820 of 2018

srg 29/08/2018



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