

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.33659 of 2010

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ in the nature of Mandamus declaring the action of the respondents in deducting an amount of Rs.1,31,725/- granted to the petitioner towards HRA from 10.10.2007 to 30.11.2009 @ Rs.7,500/- per month as illegal, arbitrary and against the principles of natural justice & Articles of the Constitution of India and to direct the respondents to consider the representation, dated 13.01.2010, of the petitioner and release & pay, along with interest @ 24% per annum, the HRA amount, which was withheld.

2. I have heard the submissions of Sri K. Jagadishwar Reddy, learned counsel appearing for the writ petitioner, and of Sri K. Lakshman, learned Assistant Solicitor General appearing for the respondents. I have perused the material record.

3. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:-

The petitioner joined service in the Central Reserve Police Force in the year 1983. As on the date of the institution of the writ petition, he was working as Inspector in the Office of the 3rd respondent-Deputy Inspector General of Police, Range Quarters, CRPF, Hyderabad [hereinafter, '3rd respondent']. On transfer and on joining, on 17.07.2006, in the office of the 3rd respondent, the petitioner made a representation, dated 18.07.2006, for grant of 'out living permission' to enable him to stay with his family in his own house at Plot No.99, Sta Homes, New Gayatri Nagar, Hyderabad. There is no bar for granting such permission to live in an own or rented house outside the

unit. However, on the advice of seniors, the petitioner requested the officials for allotment of a quarter. Nonetheless, the office of the 3rd respondent issued 'non availability of quarter certificate', on 02.01.2007. Thereafter, sanction orders were issued by the 3rd respondent vide letter, dated 01.02.2007, granting HRA till allotment of quarter. Afterwards, 4th respondent by office order, dated 24.11.2009, allotted quarter, subject to condition that if the petitioner failed to occupy the quarter within one month, allotment will be cancelled. He also issued another letter, dated 06.01.2010, directing the petitioner to submit willingness and also anticipated date of occupation of the allotted quarter. To the above letters, the petitioner submitted a representation, on 13.01.2010, requesting the officials to permit him to stay in his house till December, 2010, taking into consideration his difficulties, to overcome which he had even forgone his promotion to the post of Superintendent/ Subedar Major. However, on the said representation, no orders were passed. All the employees of Central Government are entitled to HRA or allotment of quarter subject to availability. The quarters available in the unit are sub divided into various types. Only 77 quarters are earmarked for Sub-Inspectors/ staff nurses/ Inspector range officers. Several persons in the said ranks are awaiting allotment of quarters. Out of the said 77 quarters, which are available, this petitioner is entitled to type-III quarter. There are several persons waiting for allotment of one such quarter. While so, 3rd respondent pointed out the audit objections, which read as under:

'No.831530187 Insp(M) A. Srinivasa Rao whose name was kept in Waiting List S.No.6 against authorized Quota for Range HQr for family accommodation was sanctioned HRA for one year w.e.f 09.08.2006 on the basis of NAC issued by GC CRPF, Hyderabad. Thereafter, the official was allowed to draw HRA continuously upto 30.11.2009 which is not in order. The NAC should have been reviewed periodically on the basis of his seniority in the W/L of authorized quota but in the instance case the procedure was not followed. Therefore, individual has been drawn OP HRA beyond his entitlement. Accordingly, OP HRA w.e.f the date of allotment of family accommodation to his immediately junior (i.e.S.No.7 of waiting list) to date of drawal needs recovery allowed to draw HRA.'

However, the said objection and lapse for periodical review and grant of NAC is on the part of the Department. The 3rd respondent, without application of mind, started deducting Rs.7,500/- per month, towards recovery of the amount which was paid to the petitioner under the head HRA from 10.10.2007 to 30.11.2009. When the petitioner made enquiries, he was informed that total amount to be deducted is Rs.1,31,725/-; and, that the said amount will be deducted in 18 equal monthly instalments. The quarter was allotted on 24.11.2009. The terms and conditions therein imply that on occupation of the quarter, the petitioner is not entitled to draw HRA. But, as the petitioner was never allotted quarter prior to 24.11.2009, he is entitled to draw HRA till the said period. The officials can recover the loss related to the period during which the petitioner failed to occupy the quarter allotted to him; whereas, as on date, type-III quarters are never vacant even for a month and even the case of the respondents is not that the petitioner failed to occupy the vacant allotted quarter. As such recovery of an amount of Rs.7,500/- is without jurisdiction, illegal and arbitrary. Hence, the writ petition is filed.

4. This Court, while admitting the writ petition, on 25.03.2011, granted the following interim order: - 'There shall be interim direction as prayed for, as per the Rules.'

5. Seeking vacation of the said interim order, respondents filed vacate petition.

6. The case of the respondents as stated in the counter affidavit filed by the 4th respondent and as per the submissions made on their behalf, in brief, is as follows:

As per Rule 41 of CRPF Rules, 1955, all Non Gazetted employees of the Force are entitled for rent free family accommodation. In the event of non-provision of the same, such employees are compensated by paying

compensation in lieu of quarters (CILQ), House Rent Allowance (HRA) and Family Accommodation Allowance (FAA) etcetera as per the entitlement in each case. By the nature of duties, which the Force personnel are required to perform, it is administratively necessary to keep certain percentage of the staff in battalion/group centre campus in barracks (single accommodation). Personnel who are not required for administrative exigencies to stay in the campus are permitted to live outside under their own arrangements according to the instructions issued from time to time, if they cannot be provided with Government family accommodation and they apply for such permission. House Rent Allowance is granted to the employees who apply for Government family accommodation and to such of the applicants who could not be provided with such accommodation for non availability of quarters. Such persons live outside the camp at designated head quarters in their own or rented houses by producing 'No Accommodation Certificate' [NAC] issued by the Estate Officer. The petitioner having joined in the office of the 3rd respondent made an application, dated 18.07.2006, requesting to grant him 'out living permission' to enable him to stay with his family in his own house. He was granted permission accordingly. He submitted another application, dated 09.08.2006, to the 4th respondent, requesting to issue him NAC so that he can draw HRA. The petitioner was issued with NAC from 09.08.2006 *vide* certificate, dated 02.01.2007, of the 4th respondent; and, the petitioner's name was kept in the waiting list at sl.no.6 for type-III quarters. On the basis of NAC, the petitioner, *vide* order, dated 01.02.2007, was sanctioned HRA from 09.08.2006 till the date of allotment of quarter. He drew HRA from 09.08.2006 and continued to live in his own house. As he committed in his applications, dated 17.07.2006 and 09.08.2006, about his intention to live outside the camp, that is, in his own house during the period of posting, he was not allotted Government quarter for some time by the department; and, Government quarters were allotted to the

persons below him in the waiting list. In the meantime, *vide* order, dated 24.11.2009, of the Estate Officer, the petitioner was allotted family quarter, for a period of three years, with a direction to occupy the quarters within one month. In response, the petitioner submitted application, dated 13.01.2010, to the Estate Officer intimating his inability to occupy the allotted quarter and further requesting to allow him to stay outside the camp in his own house for his personal reasons. The petitioner further requested the Estate Officer to extend the NAC already issued to him till December, 2010 by stating his problems. Considering the application, the Estate Officer cancelled the allotment of quarter no.18, Type-III to the petitioner *vide* office order, dated 10.03.2010, under intimation to him. As the official refused to occupy the allotted Government quarter, payment of HRA to him was stopped from 01.12.2009. In the meantime, the audit party, during the course of audit of the Range Office, CRPF, from 30.05.2010 to 04.06.2010, objected to the drawing of HRA by the petitioner citing reasons that he was not entitled for drawing HRA from the date of allotment of quarter to the next immediate person after him in the waiting list; and, the audit party further advised the department to recover the overpaid HRA from that date. In the backdrop of the audit objection, the petitioner submitted an application, dated 26.08.2010, to the 4th respondent stating that he was drawing HRA from 09.08.2006 to 30.11.2009 under the strength of NAC issued by the Estate Officer and that during his whole period of stay at Hyderabad, he was never provided any entitled type of Government family accommodation. He further requested not to affect recovery of HRA drawn by him. Compliance was also submitted to audit intimating the factual position and to drop the audit para. But the audit party did not accept the compliance submitted and insisted for recovery of overpaid HRA from the petitioner. Therefore, the office could not consider the request of the petitioner and proceeded to recover the HRA. As the over

payment worked out to Rs.1,31,725/-, recovery was started as per the directions of the audit. Therefore, the decision of the department stands good. Hence, the writ petition is liable to be dismissed.

7. I have given earnest consideration to the facts and submissions.

8. From the facts, pleadings and submissions made in line with the pleadings, and the contents of the material documents, the following facts are perceptible.

On the petitioner joining the office of the 3rd respondent, on 17.07.2006, he made a representation, on 18.07.2006, for grant of 'out living permission' to enable him to stay with his family in his own house. He also applied for allotment of family accommodation/type-III quarter as per his eligibility. However, he was issued NAC, on 02.01.2007. In the said certificate, it was stated that he is not so far been allotted any Government family quarter due to non availability of the same and that his name has been kept in waiting list at sl.no.6 for type-III quarters. Since he was granted out living permission and was also issued NAC, he started drawing HRA etcetera as per entitlement. Further, as the petitioner committed himself in his applications, dated 17.07.2006 and 09.08.2006, to live in his own house outside the camp during the period of posting in the office of the 3rd respondent, he was not allotted Government quarter for some time by the department; and the Estate Officer proceeded to allot Government quarters to the persons below him in the waiting list. While so, on an eligible quarter falling vacant, by proceedings, dated 24.11.2009, the same was allotted to the petitioner, on 24.11.2009, for a period of three years. He was directed to occupy the quarter within one month. Admittedly, the petitioner was also directed to give his willingness and date of anticipated occupation of the allotted quarter. However, the petitioner made an application, dated 13.01.2010, intimating his inability to occupy the quarter allotted and requested to allow him to stay in his own

house outside the camp, for his personal reasons, which are adumbrated and further requested to extend NAC already issued to him till December, 2010. Considering his application, the Estate Officer cancelled the allotment of quarter by orders, dated 10.03.2010; and, payment of HRA was stopped from 01.12.2009. It is not in dispute that once the petitioner refused to occupy the quarter allotted, payment of further HRA was stopped, that is, from 01.12.2009 and in-fact the quarter was subsequently allotted to immediate junior in the list. However, for the only reason that NAC was not obtained by the petitioner, the audit party took an objection with regard to (excess) drawal of HRA in the absence of NAC and directed for recovery of the (excess) HRA drawn from the date of the allotment of the quarter to his immediate junior in the waiting list. Be that as it may.

9. Even according to the submissions in the counter affidavit of the respondents, in view of the commitment of the petitioner's intention to live outside the camp, when some quarters fell vacant, instead of allotting the vacant quarters to the petitioner, the department, for some time, proceeded to allot quarters to the persons below him in the waiting list. Further, on his refusal to occupy the quarter that was allotted, on 24.11.2009, and keeping in view his application to permit him to continue to live in his house outside the camp, the said allotment was cancelled by order, dated 10.03.2010, and payment of HRA was also stopped from 01.12.2009. Therefore, in the considered view of this Court, in the facts and circumstances brought before the Court, the petitioner cannot be blamed for non obtainment or non issuance of NAC more particularly as pursuant to his application, the allotment of the quarter was cancelled and the quarter was allotted to a junior in the waiting list and from the date of refusal to occupy the quarter the payment of HRA was stopped. Further after the audit party raised an objection, the factual position was also intimated to the audit party requesting to drop the audit para.

Therefore, the Department is also of the considered view that the amounts as stated in the objection of the audit party are not recoverable in the facts and circumstances applicable to the case of the petitioner. However, since the audit party refused to accept such compliance report and also the request for dropping of the audit para, the recovery was initiated.

10. Having given earnest consideration to the facts and submissions, and for the afore-stated reasons, this Court finds view that the petitioner is entitled to the relief claimed in the writ petition as the recovery initiated merely on the ground of non obtainment or non issuance of NAC is impermissible. Hence, this Court holds that the petitioner is entitled to refund of the amount withheld, however, without interest having regard to the relationship of employer and employee and the peculiar facts of the case.

11. In the result, the Writ Petition is allowed in part. As a sequel, the respondents are directed to refund to the petitioner the amounts withheld, however, without any interest, within four (4) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

16.07.2018

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