**HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

**WRIT PETITION NOs.5507, 6546, 6576 & 16034 OF 2002**

**COMMON ORDER:**

All these writ petitions are being disposed of by way of common order, as the issue raised in these writ petitions is one and the same.

These writ petitions are filed challenging the action of the respondents in not paying the House Rent Allowance (H.R.A) based on Basic Pay plus Dearness Allowance (D.A) in terms of the settlement, dated 15.06.1997, and in paying the H.R.A only on Basic Pay by deleting 'D.A' component.

Challenging the very same action of the respondents, the petitioners have earlier filed W.P.No.12027 and 17237 of 2000 and this Court was pleased to grant interim stay of recovery and ultimately disposed of the said writ petitions vide orders dated 01.10.2001 directing respondent No.3 therein to adjudicate the issue and pass appropriate orders. Thereafter, the Additional Registrar had considered the cases of the petitioners and passed orders on 16.02.2002 holding that the H.R.A is liable to be paid only on Basic Pay by excluding 'D.A' component. Aggrieved by the same, the present writ petitions are filed.

Counsel for the petitioners submits that as per the Memorandum of Settlement dated 15.06.1997, H.R.A is liable to be paid to the employees @ 12.5% of the 'pay' irrespective of the place of work and, when it came to C.C.A., the C.C.A was to be paid at 3.5% of the 'Basic Pay' at Hyderabad, Vijayawada and Visakhapatnam, subject to a minimum of Rs.75/- and maximum of Rs.230/- per month. Learned counsel further submitted that in the said settlement, since the expression 'Basic Pay' was not used for calculating H.R.A and only the expression 'pay' was used, H.R.A shall be paid on the entire pay including both 'Basic Pay' and 'D.A' and the said contention was considered by the Additional Registrar, however, the Additional Registrar, after giving opportunity to all the petitioners and Unions concerned, passed a detailed order on 16.02.2002 categorically holding that the H.R.A will be paid only on 'Basic Pay' by excluding the D.A.

Standing Counsel appearing for the respondents had contended that the H.R.A will always be paid based on 'Basic Pay' only, but not on 'Basic Pay plus D.A', and the authorities i.e., the Additional Registrar has rightly adjudicated the case in favour of the respondent Bank, therefore, there are no merits in these writ petitions and the writ petitions are liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for respective parties, is of the considered view that the contention of the petitioners that H.R.A has to be paid based on the 'Basic Pay and D.A' cannot be accepted. H.R.A is always paid based on the 'Basic Pay' alone, and the Additional Registrar has rightly adjudicated the case in favour of the respondent Bank. Further, the petitioners are challenging only the order, dated 16.02.2002, passed by the Additional Registrar and no individual orders of recovery are issued. Even before issuance of individual recovery orders, the petitioners have approached this Court and obtained stay. It is for the respondents to issue individual orders of recovery in pursuance of the orders dated 16.02.2002 passed by the Additional Registrar. If the petitioners are still aggrieved by individual orders of recovery to be passed, it is always open to them to challenge such individual recovery orders. For the present, the petitioners cannot challenge the orders dated 16.02.2002 passed by the Additional Registrar.

So far as W.P.No.6546 of 2002 is concerned, the petitioners have already retired from service and the respondents have deducted the excess H.R.A paid to the petitioners from their retiral benefits. Now, the issue is whether the amounts paid by the employer in excess of the entitlement of the employees, can be deducted from the retiral benefits of the employees after their retirement. Similar issue fell for consideration in **State of Punjab v. Rafiq Masih**[1], wherein the Hon'ble Supreme Court had held that the amounts paid by the employer in excess of the entitlement of the employees cannot be deducted from the retiral benefits of the employees and, even if such amounts are deducted, the same have to be refunded to the retired employees. Therefore, on principle, though the petitioners in W.P.No.6546 of 2002 are not entitled for H.R.A to be calculated on basic pay and D.A, they were paid as such, and later on, the excess

[1] (2015) 4 SCC 334

amount was deducted from their retiral benefits. Therefore, the amounts deducted from the retiral benefits shall be refunded, since the petitioners have already retired from service.

Hence, W.P.Nos.5507, 6576 and 16034 of 2002 are dismissed and W.P.No.6546 of 2002 is allowed. The respondents are directed to refund the amounts deducted from the retiral benefits of the petitioners in W.P.No.6546 of 2002. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

**ABHINAND KUMAR SHAVILI, J**

19th September, 2019
v v