

**IN THE HIGH COURT AT CALCUTTA**  
**Constitutional Writ Jurisdiction**  
**Appellate Side**

Present:

**The Hon'ble Justice Shekhar B. Saraf**

***W.P.A. 1389 of 2018***  
**Mousumi Biswas & anr.**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 7311 of 2018***  
**Labanyamayee Kit (Mit)**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 1876 of 2018***  
**Nivedita Sarkar Majumder & anr.**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 4006 of 2018***  
**Mousumi Somadder & ors.**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 2004 of 2018***  
**Mita Majumder & ors.**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A.2631 of 2018***  
**Susmita Guha & ors.**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 4100 of 2018***  
**Piyali Basu Dutta & ors.**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 7305 of 2018***  
**Suchitra Khan**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 20299 of 2018***  
**Bratati Dutta**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 8265 of 2018***  
***(IA CAN 1 of 2018 (Old No. CAN 8992 of 2018))***  
**Chhanda Nath**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 8270 of 2018***  
***(IA CAN 1 of 2018 (Old No. CAN 8991 of 2018))***  
**Supriya Biswas**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 19556 of 2018***  
**Roshni Ghosh**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 19559 of 2018***  
**Susan Basak**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 28946 of 2017***  
***(IA CAN 1 of 2020 (Old No. CAN 631 of 2020))***  
**Subhasree Banerjee**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 28951 of 2017***  
***(IA CAN 1 of 2020 (Old No. CAN 630 of 2020))***  
**Sumana Mukherjee**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 28949 of 2017***  
***(IA CAN 1 of 2020 (Old No. CAN 632 of 2020))***  
**Sheweta Sarkar Nag**  
**-Versus-**  
**State of West Bengal & ors.**

***With***

***W.P.A. 28945 of 2017***  
***(IA CAN 1/ 2020 (Old No. CAN 633 of 2020))***  
**Mohua Mukherjee Chakraborty**  
**-Versus-**

**State of West Bengal & ors.**

***With***

***W.P.A. 13 of 2019***

**Sarmistha Ray**

**-Versus-**

**State of West Bengal & ors.**

***With***

***W.P.A. 1100 of 2020***

**Sanchayita Paul**

**-Versus-**

**State of West Bengal & ors.**

***With***

***W.P.A. 14899 of 2019***

**Shiuli Mondal & Ors.**

**-Versus-**

**State of West Bengal & ors.**

***With***

***W.P.A. 10846 of 2020***

**Tanima Ghosh Nandi**

**-Versus-**

**State of West Bengal & Ors.**

***With***

***W.P.A. 24951 of 2018***

**Saoli Mitra & Ors.**

**-Versus-**

**State of West Bengal & Ors.**

***With***

***W.P.A. 18083 of 2017***

**Runu Roy & Ors.**

**-Versus-**

**State of West Bengal & Ors.**

***With***

***W.P.A. 26604 of 2015***  
**Kuheli Roy & Ors.**  
**-Versus-**  
**State of West Bengal & Ors.**

***With***

***W.P.A. 11896 of 2016***  
**Kakali Dutta**  
**-Versus-**  
**State of West Bengal & Ors.**

***With***

***W.P.A. 12265 of 2017***  
**Sangita Bhattacharyya & Anr.**  
**-Versus-**  
**State of West Bengal & Ors.**

For the Petitioner in W.P.A 7311 of 2018 : Mr. Malay Bhattacharya

For the State Respondents in all the writ petitions : Mr. Kishore Dutta, Ld. A.G.

For the State in WPA 1389 of 2018, : Ms. Chaitali Bhattacharya  
W.P.A.19559 of 2018, W.P.A. 8270 of Mr. Mrinal Kanti Ghosh  
2018, W.P.A. 7311 of 2018

For the petitioner in W.P.A 1389 of 2018, : Ms. Debjani Sengupta  
W.P.A 1876 of 2018, W.P.A 4006 of 2018, Ms. Shreya Bhattacharya  
W.P.A 24951 of 2016, W.P.A 2004 of Ms. Julekha Khatun  
2018, W.P.A 2631 of 2018, W.P.A 4100 of Ms. Tiya Banerjee  
2018, W.P.A 18083 of 2017, W.P.A Mr. Sobhan Majumder  
26604 of 2015, W.P.A 11896 of 2016, Ms. Shahina Haque  
W.P.A 12265 of 2017, W.P.A. 14899 of  
2019

For the petitioner in W.P.A 13109 of : Ms. Papiya Chattopadhyay  
2018

|                                                                                                              |                                                                                                             |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| For the petitioner in W.P.A 8596 of 2015                                                                     | : Mr. Saikat Banerjee<br>Ms. Somashree Saha<br>Mr. Sandip Ghosh                                             |
| For the petitioner in W.P.A 7305 of 2018                                                                     | : Mr. Malay Bhattacharya                                                                                    |
| For the petitioner in W.P.A. 8265 of 2018, W.P.A. 8270 of 2018, W.P.A. 19556 of 2017, W.P.A.19559 of 2017    | : Mr. Sajal Kanti Bhattacharyya<br>Mr. Subhasish Banerjee<br>Mr. Sarthak Burman                             |
| For the petitioner in W.P.A. 28945 of 2017, W.P.A. 28946 of 2017, W.P.A. 28949 of 2017, W.P.A. 28951 of 2017 | : Mr. K. M. Hossain<br>Ms. Tanuja Basak                                                                     |
| For the petitioner in W.P.A. 13 of 2019 & W.P.A. 1100 of 2020                                                | : Mr. Shuvro P. Lahiri                                                                                      |
| For the State In W.P.A 1389 of 2018                                                                          | : Ms. Chaitali Bhattacharya<br>Mr. Benazir Ahmed                                                            |
| For the State In W.P.A 1876 of 2018                                                                          | : Mr. Sirsanya Bandopadhyay<br>Ms. Sudeshna Das Mazumdar                                                    |
| For the State In W.P.A 4006 of 2018                                                                          | : Mr. Saugata Bhattacharya<br>Mr. Pinaki Bhattacharya                                                       |
| For the State In W.P.A 24951 of 2016                                                                         | : Mr. Tapan Kumar Mukherjee<br>Mr. Supratim Dhar<br>Mr. Shamim ul Bari<br>Mr. Pinaki Bhattacharya           |
| For the State in W.P.A. 2004 of 2018                                                                         | : Mr. Supriyo Chattopadhyay<br>Ms. Iti Dutta                                                                |
| For the State in W.P.A 2631 of 2018                                                                          | : Mr. Tapan Kr. Mukherjee<br>Mr. Tamal Taru Panda                                                           |
| For the State in W.P.A. 4100 of 2018                                                                         | : Mr. Tapan Kr. Mukherjee<br>Mr. Saugata Mitra<br>Mr. Arindam Chattopadhyay<br>Ms. Lipika Chatterjee Thakur |

For the State in W.P.A 18083 of 2017, : Ms. Chaitali Bhattacharya  
W.P.A 26604 of 2015, W.P.A 11896 of Ms. Sudeshna Das Mazumder  
2016, W.P.A 12265 of 2017

For the State in W.P.A 8596 of 2015 : Ms. Chaitali Bhattacharyya  
Mr. Benazir Ahmed

For the State In W.P.A.7305 of 2018 & : Mr. Bhaskar Prasad Vaisya  
W.P.A.7311 of 2018 Mr. Sagnik Chatterjee

For the State in W.P.A 8265 of 2018 : Ms. Sanghamitra Nandy  
Ms. Manika Pandit

For the State In W.P.A 8270 of 2018, : Ms. Chaitali Bhattacharya  
W.P.A 19559 of 2017 Mr. Mrinal Kanti Ghosh

For the State In W.P.A 28946 of 2017 : Mr. Tapan Kumar Mukherjee  
Mr. Pranab Halder

For the respondent nos. 6 & 7 In W.P.A : Mr. T.P. Halder  
28946 of 2017

For the State In W.P.A. 28949 of 2017, : Mr. Tapan Kumar Mukherjee  
W.P.A. 28945 of 2017, W.P.A. 2631 of Mr. Somnath Naskar  
2018

For the State In W.P.A 20299 of 2018, : Ms. Chaitali Bhattacharjee  
W.P.A. 28949 of 2017, Mr. Kartick Ch. Kapas  
W.P.A. 7311 of 2018 & W.P.A. 13 of 2019

For Respondent No. 6 In W.P.A 18083 of : Mr. Saibal Kumar Acharyya  
2017 Mr. Pradip Paul

For the Petitioner : Mr. Sudip Deb  
Mr. Rijju Ghosh

For Promorma Respondent : Mr. Barnamoy Basak  
Mr. S. Chakraborty

For the Respondent : Mr. Sailendra Kumar Tiwari

For the Applicants  
(Addition of Parties)

: Ms. Sayantika Dey

For State Respondent

: Mr. Aniruddha Chattopadhyay

For the petitioner in WPA : Mr. Subir Sabud  
10846 of 2020

For the State in W.P.A. 1100 of 2020

: Mr. Susanta Pal  
Mr. Ananda Dulal Sarkar

**Heard on : 27.08.2018, 19.12.2018, 04.01.2019, 06.02.2019, 14.03.2019, 09.04.2019,  
12.06.2019, 18.09.2020, 01.10.2020, 10.02.2021.**

**Judgment on : 16.03.2021.**

**Shekhar B. Saraf, J.:**

1. The present application has been filed by the petitioners under Article 226 of the Constitution of India, assailing a set of memos issued by the State Respondents which adversely affects the right of the petitioners to draw the House Rent Allowance (hereinafter referred to as “HRA”) under the Revision of Pay and Allowances (hereinafter referred to as “ROPA”) Memorandum of 2009, as presently applicable to them.
2. Subsequently however, since multiple writ petitions mounted the same challenge to the self-same issue of the HRA, the Court by its order dated January 4, 2019 and based on the consent of all the parties involved in this *lis*, took up all these writ petitions together through the course of 2019 on multiple dates. However, the disruption caused by the outbreak of the novel

coronavirus inordinately delayed the adjudication of this *lis* for almost a year. While Ms. Chaitali Bhattacharya had made her detailed submissions on behalf of the State Respondents in 2019, I had requested the assistance of Mr. Kishore Datta, the learned Advocate General, by an order dated September 18, 2020. Mr. Datta had appeared on October 1, 2020 and had made part of his submissions. However, post his closing submissions on February 10, 2021, the hearing finally stood concluded and the judgment was reserved in the matter. Therefore, I would now proceed to dispose of all the pending writ petitions by this common judgment and order.

3. For the purpose of stating the facts, I shall specifically refer to W.P.A No. 1389 of 2018. Needless to mention, all the petitioners are similarly placed, and the decision herein shall cover all the writ petitions. The facts of the case, in so far as they are material to this writ petition, are circumscribed in a narrow compass and are encapsulated as follows: the writ petitioners are presently serving as incumbent Assistant Teachers of the government sponsored schools (hereinafter, referred to as the 'said schools'). The said schools are categorized as non-government schools, sponsored by the Government of West Bengal and under the control of the School Education Department.
4. The petitioners state they were appointed to their incumbent posts in the said school based on the selection process conducted by the West Bengal Regional School Service Commission (hereinafter referred to as the 'School Service Commission').

- a) Petitioner No. 1, Mousumi Biswas, so named, was recommended for appointment to the post of an Assistant Teacher, in Chemistry and by a subsequent letter of appointment dated September 27, 2008, she was offered such an appointment by the said school authority. Accordingly, Petitioner No. 1 joined the said post on October 4, 2008. Based on the subsequent approval by the District Inspector of Schools (S.E.), Nadia, (hereinafter referred to as, Respondent No. 5), the appointment of the Petitioner No. 1 to the said post was approved by an approval memo dated April 26, 2011.
- b) Petitioner No. 2, Anusri Sil, so named, was similarly recommended for appointment by the School Service Commission and by a subsequent letter of appointment dated August 4, 2010, the said school authority offered her an appointment to the post of Assistant Teacher of Bio-Science. Accordingly, the Petitioner No. 2 joined the said post on August 11, 2010. Her appointment to such post was also approved by the Respondent No. 5 by approval memo dated October 6, 2010.
5. The writ petitioners post their joining to the stated posts had been drawing a salary as mandated in the scale of pay. Such salary with permissible components also included *inter alia*, the specific component of HRA payable as per the ROPA Memorandum, subject to such revision as made by pertinent Government Orders in conformity with the ROPA Memorandum, from time to time.

6. The extant provision of ROPA Memorandum, 2009, that is, paragraph 13 *specific* to the component of HRA payable to the teaching and non-teaching staff of *Government sponsored or aided schools* upto Class- XII standard and applicable in this case of the aggrieved petitioners, was circulated by a memo bearing No. 46-SE(B)/5B-1/2009 dated February 27, 2009 and is stated as follows:

**“13. House Rent Allowances:**

With effect from the 1<sup>st</sup> April, 2009 the House Rent Allowance admissible to an employee shall be 15% of his revised basic pay i.e. aggregate of the band pay plus Grade Pay and additional increments, if any, in the revised pay structure subject to a maximum of Rs. 6000/- per month. The ceiling of House Rent Allowance drawn by husband and wife together shall also be raised to Rs. 6000/- per month.

The existing terms and conditions of drawl of House Rent Allowance by employees living in their own house or in a rental house shall continue to apply.

Subject to continuance of the existing terms and conditions regulating drawl of House Rent Allowance by the employees provided with accommodation owned/hired by the Authority and recovery of fixed rent/license fee from time, the following conditions shall be there with effect from 1<sup>st</sup> April, 2009 in respect of such categories of employees.

- 1) When an official accommodation being in habitable condition in all respect and such accommodation is earmarked for holder of a particular post without any rent, the holder will not be entitled to House Rent Allowance for living elsewhere.
- 2) In case the employee pays rent or license fee for such official Government accommodation, his reimbursement in the form of

House Rent Allowance will be limited to actual license fee/rent paid or 15% of the pay whichever is lower.”

7. The extant paragraph 13 of ROPA Memorandum, 2009 enhanced the ceiling of HRA that could be drawn jointly by a husband and wife together to Rs. 6000/- per month. Paragraph 10 of the erstwhile ROPA Memorandum of 1998, circulated by Memo No. 25-SE(B) dated February 12, 1999 previously pegged such a ceiling at Rs. 2000/- per month. However, the State Government did issue a clarificatory memorandum bearing No. 97-SE(B)/1M-24/2001 dated March 7, 2001 in furtherance to paragraph 10 of the erstwhile ROPA Memorandum of 1998 wherein the memorandum categorically specified the following aspect vis-à-vis the HRA payable and the ceiling applicable to working spouses jointly as:

“.....In case where both the husband and the wife are Teachers/Non-teaching Employees or one of them is a Teacher/Non-teaching Employee of a Non-Govt./Sponsored Educational Institutions including Libraries and employees of a District Primary School Council, and other spouse is an employee of the State Govt./Central Govt./Public Undertakings/Local Bodies etc., the HRA @ 15% of Basic Pay may be allowed not exceeding of Rs. 2000/- p.m. on the basis of declaration to be given by them to the effect that the H.R.A. taken by both of them together from their offices does not exceeded Rs. 2,000/- p.m.....”

8. The petitioners have stated that their spouses are neither teachers nor non-teaching employees of sponsored or aided educational institutions. *Per contra*, the spouse of Petitioner No.1, is employed with a private organization bearing the name “Electrosteel Castings Limited” and the spouse of Petitioner No. 2, is employed with another private organization bearing the name “TCG Lifesciences” and as per all the petitioners, the State government bears no role or responsibility or incurs any financial liability towards either the appointment, salary, service, retirement *et al* of the spouses, employed with

such private organizations. Accordingly, in compliance with the memorandum dated March 7, 2001, the writ petitioners were accustomed to drawal of HRA at the rate of 15% of the revised basic pay subject to an erstwhile ceiling of Rs. 2,000/- per month under the ROPA Memorandum of 1999 and thereafter the revised ceiling of Rs. 6,000/- per month under the revised ROPA Memorandum of 2009.

9. In furtherance of the memorandum issued on March 7, 2001, the relevant extract of which has been quoted *supra*, the same memorandum also stipulated the submission of a year-wise declaration in a specimen HRA Declaration Form with the material particulars of the amount of HRA drawn by the spouse of the employee, so covered by the memorandum. In pursuance of the same, the petitioners have been submitting such Declaration Forms all the while stating that their spouses were *not* in the employ or service of either the Government of India or the State Government of West Bengal or any government undertaking or any statutory or local body or any instrumentality of the State, with the last of such declarations submitted in the month of November 2017.
  
10. It is the averment of the petitioners that in the month of January 2018, the Head Mistress of the said school (hereinafter referred to as, Respondent No. 8) issued a notice upon the direction of the Additional District Inspector of Schools (SE), Ranaghat Sub-Division, Nadia (hereinafter referred to as, Respondent No. 6) vide Memo no. 2554/G/SE dated December 28, 2017, calling upon the petitioners to submit the salary certificates or pay slips of

their spouses working among other sectors, of “private concern”. Such a direction also stipulated that all Heads of the Institutions to stop the payment of HRA to all such employees (as the petitioners) who do not submit such certificates or play slips applicable to their spouses and the initiation of immediate action to ensure the recovery of the supposed overdrawn HRA.

11. The petitioners submitted separate, written representations to the Headmistress of the said school dated January 9, 2018, apprising her of the fact that their respective spouses did not draw any HRA from the Government as they were not in the service of the Government and accordingly requested the Respondent No. 8 to not deduct the HRA from the respective salaries of the petitioners. Thereafter, the petitioners wrote separate letters to the Respondent No. 5, Respondent No. 6 as well as the Respondent No. 8, urging them to share a copy of the memo no. 2554/G/SE dated December 28, 2017 which possessed enough scope to prejudicially affect the petitioners. The petitioners have averred that while no reply had been received from Respondent Nos. 5 and 6, Respondent No. 8 furnished a response upon a copy of the letter submitted by the petitioners, dated January 16, 2018, with the following comment ascribed under the seal of the Respondent No. 8 as:

“ \*\*\*\*

“The memo no 2554/G/SE dt. 28.12.17 is not available in my office. So it is impossible to issue this memo to Mousumi Biswas & Anusri Sil A.T. of our institution.”

\*\*\*\* ”

12. As the petitioners received no satisfactory response from the Respondents and their right to draw HRA was prejudicially affected by the memo dated December 28, 2017, the petitioners took the recourse of filing the instant writ petition to address the *lis* that had arisen.
13. Subsequently, post the filing of a slew of writ petitions which challenged these memos, the State Respondents issued a clarificatory “Corrigendum” bearing No. 8012-F(P2)FA/0/2M/206/17(N.B) dated December 27, 2018 which was in furtherance of the Memo No. 5839-F(P) dated July 9, 2012, and extended its application, i.e. Memo No. 5839-F(P) to the employees of sponsored or aided educational institutions whose spouses were employed in the private sector and were drawing HRA to trigger the ceiling limitation as envisaged by such memo. The clarificatory corrigendum dated December 27, 2018 is reproduced below:

“ \*\*\*

Dated. Howrah, the 27<sup>th</sup> December, 2018

#### CORRIGENDUM

In this Department’s **Memorandum No. 5839-F(P), dated 09.07.2012**, for the words Nov, with a view to removing the confusion persisting in the matter the undersigned is directed by the order of the Governor to say Governor is pleased to clarify that au the spirit of the existing provision of the rules goes, **in the matter of granting HRA to a state Government employee whose spouse is working in a private organization whereas HRA is allowed as a separate element, the HRA of the spouses shall be taken into account as done in the case where spouses is the employee of any Government or semi-Government organization** please read now, with view to clarifying the doubt persisting in the matter the undersigned is directed by order of the Governor to say

that Governor is please do clarify that as the spirit of the existing provision of the rules goes in the matter of granting HRA to an employee of State Government/sponsored/aided Educational institution/ Board/ Corporation/Statutory Board/ Autonomous body and/other agencies of other instructions of the state which is /are wholly or subsequently owned and /or controlling by the Government, whose spouses is working in a private organization, where HRA is allowed as a separate element, the HRA of the spouses shall be taken into account as done in the case where spouses is the employee of any Government or semi-Government organization.

\*\*\* ”

14. Therefore, the short question that I have to deal with is whether the State can curtail the right of the petitioners to draw the HRA, based on the premise that their spouses, who are employed with private organizations, are receiving separate HRA and thereby triggering the ceiling envisaged by the ROPA Memorandum of 2009, by simply issuing the impugned clarificatory corrigendum?

**SUBMISSIONS OF MS. DEBJANI SENGUPTA:**

15. Ms. Sengupta, learned counsel for the petitioners, has drawn my attention to the memo dated November 16, 2017 (hereinafter referred to as “Audit Memo”) issued by the Special Secretary, School Education Department (hereinafter referred to as, Respondent No. 3) to the Respondent No.5, bearing no. 68-ES/Audit/12A-47/17 directing him to verify the admissibility of HRA to all the teachers and other employees of all the schools within the jurisdiction of

Respondent No. 5, to restrict the drawal of HRA within the limit of Rs. 6,000/- per month by collecting certain documents. It is in this Audit Memo, Ms. Sengupta emphasizes, that the aspect of salary slip/certificate of spouse working in “private concern” was stated therein for the first time. Ms. Sengupta mounts a challenge to this Memo dated November 16, 2017 as the payment of HRA of employees’ spouses from private employment does not fall under the common ceiling of HRA of Rs. 6,000/- per month which is squarely governed by the conditions stipulated by the ROPA Memorandum, 2009 and applicable to the employees of sponsored or non-government aided institutions, as is the case with the petitioners. The relevant contents of the Memo dated November 16, 2017 is laid hereinbelow:

“ \*\*\*\*

**Sub.- Audit query regrading unauthorized drawal of HRA by submitting false declaration at school end.**

The undersigned is directed to refer to the subject noted above as received from the Sr. Audit Officer (G&SS-I/HQ) and to direct him to verify the admissibility of HRA to all the teachers and other employees of all the schools within his/her jurisdiction to restrict the drawal of HRA within the limit of Rs. 6000/- per month by collecting following documents from them twice in a year (January & July) as per norms. For this year he will do the same in November also.

1) Salary slips/ certificate of spouse where spouse where spouse are working in the Govt., PSU & **Private Concern.**

2) \*\*\*

3) \*\*\*

He is also requested to stop paying HRA to the employee who will not submit declaration/ salary slip in respect of their spouses and ensure immediate action regarding recovery of the overdrawn HRA.

An action taken report be sent to this end through the Commissioner School Education by 29.12.17.

This has the approval of the Pr. Secretary, School Education Department.

This may be treated as most urgent.

\*\*\*\* ”

16. Ms. Sengupta, learned counsel on behalf of the petitioners, has also mounted a challenge to the Finance Department Memo No. 5839-F(P) dated July 9, 2012 on the grounds of '**non-applicability**', for the reason that this memo is applicable in the matters of grant of HRA to a **state government employee**, who are governed by the altogether separate West Bengal Service (ROPA) Rules, 2009 issued vide Memo No. 1691-F dated February 23, 2009 and for the self-same reason, it is inapplicable to the *category of employees employed in non-government sponsored institutions*, who are governed by the ROPA for Non-Governmental Educational Institutions, issued by Memo. 46-SE(B) dated February 27, 2009. The said Memo No. 5839-F(P) issued a clarification to the effect that in the matter of drawal of HRA by a *State Government employee* whose spouse is employed in a private organization, wherein such spouse is allowed to the grant of HRA as a separate element, the HRA of such spouse shall be taken into account for determining the permissible HRA to be drawn by the spouse who is an *employee in the service of the State Government*.
  
17. Furthermore, it is also contended by Ms. Sengupta, that the clarificatory "Corrigendum" bearing No. 8012-F(P2)FA/0/2M/206/17(N.B) dated December 27, 2018 which was in furtherance of the Memo No. 5839-F(P) dated July 9, 2012, extended its application, i.e. Memo No. 5839-F(P) to the employees of sponsored or aided educational institutions whose spouses

were employed in the private sector and were drawing HRA to trigger the ceiling limitation as envisaged by such Memo, cannot go beyond the scope of the original Government Memorandum and therefore cannot extend it mechanically or without application of mind to the employees of non-government sponsored institutions.

**SUBMISSIONS OF MS. CHAITALI BHATTACHARYA:**

18. *Per contra*, Ms. Chaitali Bhattacharya, learned advocate for the State Respondents, has argued that the impugned decision taken by the State Government is in the nature of a state policy. It was also her submission that such a change in policy was taken by the State Government since it has access to a limited pool of resources available to them at their disposal; as such, a change of policy had been effectuated and therefore, such a policy decision is not at all arbitrary and/ or in violation of the provisions of the Constitution of India. Ms. Bhattacharya also added that from a conjoint reading of the paragraph 11 of the West Bengal Service (ROPA) Memorandum of 2009, Memo No. 1691-F, clause 6 of the WBSR Part-II and the clarificatory Memo No. 5839-F(P), the legislative intent of the State becomes apparent and as a result, the State Government was well-within in its legislative and executive domain to effect such a change in policy.
  
19. To buttress her argument on a more solid foundation, Ms. Bhattacharya relied on the following judgments of the Supreme Court: ***State of Punjab –v- Ram Lubhaya Bagga*** reported in ***(1998) 4 SCC 117***, ***State of U.P. –v- Chaudhari Ran Beer Sigh*** reported in ***(2008) 5 SCC 550*** and ***Federation***

**of Railway Officers Association –v- Union of India** reported in **(2003) 4 SCC 289**.

20. Ms. Bhattacharya has also argued that HRA is not a statutory right but rather a compensatory allowance and can be subjected to reasonable restrictions and to supplement her argument has placed reliance on the judgment of the Supreme Court in **Director, Central Plantation Crops Research Institute, Kesaragod –v- M. Purushothaman** reported in **1994 Supp (3) SCC 282; 1995 Supp (4) SCC 633**.
21. Ms. Bhattacharya further placed reliance on two particular judgments of the Supreme Court in her written note of arguments, these being: **Clariant International Ltd. –v- Securities & Exchange Board of India** reported in **(2004) 8 SCC 524** and **Rohitash Kumar –v- Om Prakash Sharma** reported in **(2013) 11 SCC 451** to emphasise on the scope of the powers of a constitutional court to interpret, *inter alia*, parent and subordinate legislations.

#### **SUBMISSIONS OF THE LEARNED ADVOCATE GENERAL:**

22. Mr. Datta, the learned Advocate General categorized the nature of the HRA as not a 'pay' but the fact that is in the nature of 'compensation'. As per his submission, there exists an unwritten obligation on the part of an employer to provide residence to those in its employment. The HRA is not paid to the employee, but to the family of the employee 'in lieu of accommodation' when the employer is unable to discharge such an obligation; only then does the

component of HRA, which is compensatory in nature, come into play. He too relied on the precedent of ***M. Purushothaman (supra)***, particularly paragraph 8 of the judgment, to buttress such limb of his argument.

23. Mr. Datta thereafter drew my attention to page 11 of the affidavit-in-opposition, specifically, paragraph (h). Mr. Datta submitted that as far as the HRA was concerned, the office of the Accountant General, as the pertinent Audit Officer, in his report dated September 8, 2019 had raised certain objections *apropos* the HRA entitlement of the petitioners while considering the HRA being received by their spouses from private organizations. Accordingly, for determination of the issue with regard to the issue of HRA, the Accountant General, West Bengal is a necessary party but in the instant writ petition, the same had not been arraigned as a party-respondent. And therefore, as per the submissions of Mr. Datta, the instant writ petition suffers from the infirmity of non-joinder of necessary parties.

24. Mr. Datta further relied on the Delegation of Financial Powers Rules, 1977 (hereinafter referred to as the “1977 Rules”) whereby all other government departments (including Education Department) are bound by the direction of the Finance Department with regard to any financial issue, with particular reference to conditions of service, pay scales and allowances. He relied upon clauses 4 and 13 to lend credibility to the corrigendum dated December 27, 2018 which was issued by the Finance Department. Both clauses are extracted as stated below:

“4. General and specific delegation.- In the present context of developing economy the question whether and to what extent general delegation as well as specific delegation may further be made to the administrative departments and subordinate authorities consistent with the general principles is to be carefully considered. The administrative departments and subordinate authorities shall be competent to sanction expenditure as indicated in these rules. **The financial powers of Government which have not been delegated to the administrative departments and subordinate authorities shall vest in the Finance Department.**

13. Matters relating to conditions of service.- All matters relating to scales of pay, fixation of pay, special pay, fixation of initial pay higher than the minimum, rules relating to recruitment and promotion and service cards etc., should be referred to the Finance Department unless expressly provided by other rules, orders or notifications for waiving reference to the Finance Department.”

25. I have heard the learned counsels appearing on behalf of the respective parties and perused the materials placed on record.
26. Let me first deal with the aspect of the ‘change in policy’ that has been advanced by Ms. Bhattacharya, learned advocate for the State Respondents. The principle of ‘common ceiling of HRA’ as applicable to working spouses was restricted only to those working in government sector. This is evident from the *Finance Department’s* Order bearing No. 6038-F dated May 22, 1984, which has no mention of either the phrase ‘private concern’ or such like term. In contradistinction to the above order, the *Education Department’s* Memo bearing No. 217-Edn. (B) dated July 13, 1984, showcases that teaching or non-teaching staff of the non-Government/Aided/Sponsored educational institutions, whose spouse is an employee of a ‘private firm’ where such spouse is drawing HRA or provided with accommodation, will be

allowed to draw HRA as per the prevailing Rules. The memo laid down, *inter alia*:

“\*\*\*\*

Sub: Clarifications in respect of grant of House Rent allowance to the staff of non-Govt./aided/Sponsored Educational Institutions/Organisations.

In continuation of Govt. Order No. 475- Edn.(B) dated the 17.10.81 and No.1963-Edn.(CS) dt. 29.12.81 read with G.O. No. 5-Edn. (B) dt. 1.1.82 the undersigned is directed by order of the Governor to say that the Governor is pleased to **direct that the teaching/non-teaching staff of the non-Government/Aided/Sponsored educational institutions, whose spouse is an employee of a Private Firm where he/she is drawing House Rent allowance, or he/she has been provided with accommodation, will be allowed to draw House Rent allowance as per rules.** Before sanctioning House Rent allowance a declaration may be obtained from the incumbent concerned.

\*\*\*\*\*”

(Emphasis supplied)

27. In continuation to the Memo No. 217-Edn.(B) quoted above, the Education Department issued yet another Memo No. 305(4)-Edn.(B), dated October 31, 1984 which further specified that in cases of teaching or non-teaching staff of the non-Government/Aided/Sponsored educational institutions/organizations whose spouse is an employee of a “Co-operative Bank” were also allowed the drawal of HRA, as per the prevailing rules. This amply showcases, that there has been no *material change in the existing policy* or *the introduction of a new policy* to the common ceiling of HRA applicable to the employees, such as the petitioners, who are serving in non-Government/Aided/Sponsored educational institutions, and have spouses serving in private firms drawing separate HRA, barring the sudden departure

effectuated by a conjoint reading of the Audit Memo dated November 16, 2017 and Memo No. 2554/G-SE dated December 28, 2017. The impugned, clarificatory corrigendum dated December 27, 2018 read with the Finance Department Memo No. 5839-F(P) dated July 9, 2012 is squarely applicable only to the **State Government employees**. The Finance Department Memo No. 5839-F(P) dated July 9, 2012 reads as follows:

\*\*\*

#### Memorandum

In the matter of drawal of HRA by both husband and wife, a question has arisen if the same drawn by the spouse of a State Government employee in the employment of a private organization will be taken into account for deciding the ceiling as per Para 11 of Finance Department Memo No. 1691-F dt. 23.02.2009. The matter has been examined with reference to Rule 6(a)(i) of Appendix 20 of WBSR Part-II which read as “in a case where husband of wife is a State Government employee and the other is an employee either of the State Government or of Central Government or any other State Government or of an educational institution or a local body etc.the allowance at usual rate will be admissible to both of them without reference to rent certificate”. The amount as mentioned therein must be within the prescribed ceiling as prescribed by the Government from time to time. Presently it is as per Para 11 of Finance Department Memo No. referred to above. The term ‘etc,’ used in the said Rule has wider application and is not restricted to employees of Central or State Government or educational institutions or local bodies but includes others also.

Now, with a view to removing the confusion persisting in the matter the undersigned is directed by order of the Governor to say that Governor is pleased to clarify that as the spirit of the existing provision of the rules goes, in the matter of granting HRA to a State Government employee whose spouse is working in a private organization, where HRA is allowed as a separate element, the HRA of the spouse shall be taken into account as done in the case where spouse is the employee of any Government or semi-Government organization.

This will take immediate effect.

\*\*\*\*\*”

28. A bare perusal of the Finance Department Memo No. 1691-F dated February 23, 2009, patently showcases the different **categories of employees** and states the category of employees to which such memo applies. The relevant extract of such memo is reproduced below:

“ \*\*\*

### **MEMORANDUM**

**Subject: Clarificatory Memorandum on the West Bengal Services (Revision of Pay & Allowance) Rules, 2009 and on allied matters dealt with by the Fifth Pay Commission.**

In Finance Department Resolution No. 6020-F dated the 28<sup>th</sup> August, 2008 the Government constituted a Pay Commission

- (1) to examine the present structure of pay and conditions of service after taking into account the total package of benefits available to the following categories of employees and to suggest changes which maybe desirable and feasible keeping in view the decisions of Central Government on the recommendations of the Sixth Central Pay Commission;
  - a) employees under the rule making control of the Government of West Bengal except members of the All India Services, West Bengal Judicial Service and the members of the services to whom the University Grants Commission Scales of pay and AICTE scales of pay are applicable;
  - b) teaching and non-teaching employees of Government sponsored or aided –
    - i. educational institutions,
    - ii. Training Institutions of Primary Teachers,
    - iii. Libraries,
    - iv. Polytechnics and Junior Technical Schools;

- c) non-teaching employees of non-Governmental Colleges (Sponsored or Aided);
- d) employees of Municipalities, Municipal Corporation, Notified Area Authorities, District Primary School Councils and Panchayat Bodies;

(2) \*\*\*

(3) \*\*\*

(4) \*\*\*

(5) \*\*\*

The Commission submitted its report on the 12<sup>th</sup> February, 2009. After due consideration of the recommendations of the Commission, the Governor has been pleased to make the decisions set out in the following paragraphs **in respect to the employees under category 1(a) above:-**

\*\*\*\* ”

29. The Hon'ble Governor of West Bengal, after considering the report and recommendations of the Pay Commission constituted under Finance Department Resolution No. 6020-F dated August 28, 2008, had made certain decisions only in respect of **employees under category 1(a)**, as stated above. The inference that is deduced from the above finding is the fact, that while the petitioners' class of employees were also considered for the examination of their pay structures and conditions of service, the Hon'ble Governor had expressly permitted the framing of new policy decisions specifically with regard to employees enumerated under **category 1(a) alone** and **had consciously left out employees enumerated under category 1(b)** from the scope of Finance Department Memo No. 1691-F dated February 23, 2009.

30. Therefore, since the Finance Department Memo No. 1691-F dated February 23, 2009 was inapplicable to the petitioners from the onset, by no stretch of extrapolation can the clarificatory Corrigendum dated December 27, 2018 read with the Finance Department Memo No. 5839-F(P) dated July 9, 2012 be made applicable to the petitioners. It is squarely applicable **only** to the State Government employees as specified under category 1(a) of the Finance Department Memo No. 1691-F dated February 23, 2009.
31. It is quite evident to state that no *separate* circular or order had been issued by the State Government in furtherance of the ROPA Memorandum of 2009 or the Memo Nos. 217 and 305(4) dated July 13, 1984 and dated October 31, 1984 respectively, **which is applicable to the petitioners herein**. Needless to state, if the State Government had made modifications to the ROPA Memorandum of 2009 or issued memos in the nature of Memo Nos. 217 and 305(4) dated July 13, 1984 and dated October 31, 1984, such a modification **would have appropriately and legally paved the way, by change of its policy, to take into consideration the HRA drawn by spouses of the aforesaid employees working in private firms**. However, that has not been done, and therefore, such deduction of HRA from the monthly salary of the petitioners appears to be *ex facie* illegal, capricious and arbitrary.
32. Since I have already pronounced that there has been no *material change in the existing policy* or *the introduction of a new policy* in the consideration of the common ceiling of HRA applicable under the ROPA Memorandum of 2009 while taking into attention the HRA drawn by the spouses of such employees,

engaged in private employment, I do not consider the judicial pronouncements of ***Lubhaya Bagga (supra)*** and ***Chaudhari Ran Beer Sigh, (supra)*** to be aide-worthy to the cause of the State Respondents, as either a new policy or change in policy was effected in these cases. Accordingly, both cases are distinguished and rejected.

33. As far as the argument of Ms. Bhattacharya is concerned, pertaining to the State's access to limited pool of resources which necessitated this purported rejig of policy in the first place, such argument stands self-demolished for the reason as Ms. Sengupta argued; employees of *State aided colleges and universities* are getting the full benefits of drawal of HRA, notwithstanding that their spouses might be engaged in private employment. With a lack of a certain legitimate objective being met by the State, this therefore, becomes a clear case of unreasonable classification and hence is violative of the tenets of equality enshrined under Article 14 of the Constitution of India.

34. In a recent decision, I had the occasion to examine in detail, the situations in which a constitutional court, as this Court, ought to interfere in cases which concern State policies. In ***Subhasis Negel -v- State of West Bengal*** reported in ***2021 SCC OnLine Cal 194***, the relevant extract of the broad principles which emerged are stated as follows:

*“24. Therefore, based on such precedential examination, the following distinct principles emerge:*

*A. The scope of judicial enquiry apropos policy decisions/matters of the State is restricted to the “sole dimension” of whether such policy decision/matter is either:*

- i. against any statutory provision;*
- ii. violative of any fundamental rights of a citizen;*
- iii. in the teeth of any Constitutional provision;*
- iv. manifestly arbitrary/ discriminatory;*
- v. based on irrelevant consideration.*

*B. Only the “legality” of the policy decision, and not the wisdom or soundness of such decision can be a subject-matter fit for judicial review under Article 226 of the Constitution of India.*

*C. Constitutional Courts, such as this Court ought to be hesitant in interfering in matters of such policy or the day-to-day functioning of any departments of the government or any statutory bodies.*

*D. Negligible interference in policy decisions when such decisions are the outcome of deliberations of technical experts as Courts lack the expertise to determine the basis/factors based on which such decisions might have been taken. This is also inclusive of “economic policies”.*

35. Therefore, since the impugned memos, which reflect a change in state policy as argued by Ms. Bhattacharya, are in the teeth of provisions of the Constitution of India, *inter alia* Article 14, not to mention the stark illegality of the same, the impugned memos immediately become susceptible to the Court’s power of judicial review.

36. I now proceed to consider the precedents of the Supreme Court, emphasized by Ms. Bhattacharya, in support of her now defunct argument. I first, consider ***Federation of Railway Officers Association (supra)***. The Supreme Court was seized with a matter in which the policy decision of the Union Government to establish seven railway zones was alleged to be *de hors* Section 3 of the Railways Act, 1989. Ms. Bhattacharya quoted paragraph 12 of the said judgment as:

“12. In examining a question of this nature where a policy is evolved by the Government judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.”

37. However, I would like to traverse down a few more paragraphs of the very same judgment and quote paragraph 18 as well:

“18. Even if we assume that there is force in the material placed by the petitioners that by forming new railway zones efficiency in the Railway Administration would not enhance, the reasons given by the Government and material placed by them in support of forming new railway zones is no less or even more forceful. Further, when technical questions arise and experts in the field have expressed various views and all those aspects have been taken into consideration by the Government in deciding the matter, could it still be said that this Court should re-examine to interfere with the same. The wholesome rule in regard to judicial interference in administrative decisions is that if **the Government takes into consideration all relevant factors**, eschews from considering irrelevant factors and acts reasonably within the parameters of the

*law, courts would keep off the same.* Even on the test suggested by Dr Pal, we cannot travel outside this principle to sit in appeal on the decision of the Government.”

(Emphasis supplied)

38. Notwithstanding the unreasonable classification which was carried out in the case of the petitioners which is patently violative of Article 14 of the Constitution of India, **no technical or expert findings or relevant factors** have been furnished by Ms. Bhattacharya, on behalf of the State Respondents. There is no demonstration as to the extent of fiscal prudence sought to be achieved by the State by purportedly bringing into consideration the HRA of the spouses (engaged in private employment) of those employees who are serving in non-Government/Aided/Sponsored educational institutions, to trigger the common ceiling under the ROPA Memorandum of 2009 and thereby specifying the quantum of funds saved, by the public exchequer. Therefore, such an irregular policy decision merits an interference of this Court as per the principles laid down in ***Subhasis Negel (supra)*** and ***Federation of Railway Officers Association (supra)***.
39. The situation is further exacerbated by the selective treatment meted out to such employees while employees of *State aided colleges and universities* are entitled to the full benefits of drawal of HRA notwithstanding that their spouses might be engaged in private employment. Therefore, in my opinion, ***Federation of Railway Officers Association (supra)*** does more harm to the case of the State Respondents, than the intended good it was sought to achieve.

40. Finally, as far as the decision rendered in *M. Purushothaman (supra)* is concerned, which was heavily relied upon by both the learned Advocate General, Mr. Datta as well as Ms. Bhattacharya, on behalf of the State Respondents, I am in agreement with the finding recorded in paragraph 8 recorded as:

**“8. The HRA would be covered by the definition of compensatory allowance. It is compensation in lieu of accommodation. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which are not available or provided to the employee. The moment, therefore, the amenities are provided or offered, the employee should cease to be in receipt of the compensation which is given for want of it.** We wish the Tribunal had perused the definition of ‘pay’ and ‘compensatory allowance’ given in the Fundamental Rules before pronouncing that the HRA is a part of the wages or pay and, therefore, cannot be disturbed. For both these reasons, therefore, we are unable to accept the conclusion of the Tribunal.”

(Emphasis supplied)

However, given the **lack of a definition** of a similar ‘compensatory allowance’ in ROPA Memorandum of 2009, as applicable to the petitioners in this case, and coupled with the statement recorded in Memo No. 217-Edn. (B) dated July 13, 1984, which is recorded in paragraph 26 (*supra*) of this judgment, I am constrained to reiterate that based on such distinction, this precedent also does not serve the cause of the State Respondents, and accordingly, the argument furnished by the learned Advocate General as well as Ms. Bhattacharya, that the curtailment of HRA, as a compensatory

allowance, is subject to reasonable restriction, in this case, is hereby rejected.

41. As far as the precedents relied upon by Ms. Bhattacharya in her written notes of arguments, I have considered them sequentially thus; first, the dictum in ***Clairant International Ltd. (supra)***. Ms. Bhattacharya has specifically relied on paragraph 63 reproduced as:

“63. When any criterion is fixed by a statute or by a policy, an attempt should be made by the authority making the delegated legislation to follow the policy formulation broadly and substantially and in conformity therewith. [See *Secy., Ministry of Chemicals & Fertilizers, Govt. of India v. Cipla Ltd.* [(2003) 7 SCC 1] , SCC para 4.1.)”

The impugned, clarificatory Corrigendum dated December 27, 2018 read with the Finance Department Memo No. 5839-F(P) dated July 9, 2012 is applicable in the matters of grant of HRA to a ***state government employee***, who are governed by the altogether *separate* West Bengal Service (ROPA) Rules, 2009 issued vide Memo No. 1691-F dated February 23, 2009 and for the self-same reason, it is inapplicable to the ***category of employees employed in non-government sponsored institutions***, who are governed by the ROPA Memorandum of 2009 for Non-Governmental Educational Institutions, issued by Memo. 46-SE(B) dated February 27, 2009.

42. In my considered opinion, in consonance with the views of paragraph 63 of ***Clairant International Ltd. (supra)***, what the State Respondents committed, by issuing the impugned, clarificatory corrigendum dated December 27, 2018 may be best described as a *volte-face vis-à-vis* the dictum

laid in ***Clairant International Ltd. (supra)***. This argument has also been advanced by the learned advocate for the petitioners, Ms. Sengupta, and I for reasons stated above, find favour with the same.

43. As for ***Rohitash Kumar (supra)***, Ms. Bhattacharya has laid particular emphasis on paragraph 29 of the judgment which lays down the following observation:

“29. In view of the above it becomes crystal clear that under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.”

In other words, Ms. Bhattacharya was emphasizing on the need to showcasing informed restraint when it concerned the interpretation of the term “HRA” within the ROPA Memorandum of 2009.

44. As I have previously stated in paragraph 40 (*supra*), with the lack of a definition of “compensatory allowance” to encompass within it the HRA, in the ROPA Memorandum of 2009 applicable to the petitioners, there is no ambiguity whatsoever in its phraseology, which would allow the State Respondents to curtail the right of drawal of HRA by the petitioners, let alone this Court having the need to either add or subtract even a single word given that the purported word itself does not exist in the Memorandum, at the onset.

45. Therefore in light of arguments advanced and the precedents cited and the discussion above, the Audit Memo dated November 16, 2017 and Memo No. 2554/G-SE dated December 28, 2017 are held to have been issued without authority of law and is set aside on the grounds of being issued on irrelevant considerations and being manifestly arbitrary/discriminatory, in effect as per the law laid down in ***Subhasis Negel (supra)***.
46. Furthermore, I have no hesitation in stating that the impugned, clarificatory corrigendum dated December 27, 2018 (which was issued post the initiation of the present litigation) in so far as it is inconsistent by including within its ambit employees who are serving in non-Government/Aided/Sponsored educational institutions is liable to be struck down for being violative of the Finance Department Memo No. 5839-F(P) dated July 9, 2012.
47. The impugned, clarificatory corrigendum could not have risen above its source and is accordingly set aside to such degree of inconsistency as aforesaid. If any authority is required in support of my assertion that the impugned, clarificatory corrigendum could not have gone beyond its intended scope as outlined in Finance Department Memo No. 5839-F(P) dated July 9, 2012 , reliance may be placed on the judgment of the Supreme Court in the case of ***Divisional Manager, Rajasthan State Road Transport Corporation v. Kamruddin*** reported in **(2009) 7 SCC 552**, wherein paragraph 20, the Supreme Court had clearly stated:

“20. Standing Order 36 whereto our attention has been drawn merely provides for different nature of penalties which can be

imposed on a worker stating that penalties specified at Serial Nos. 5 to 7 therein would be appealable. A corrigendum thereto was issued on 24-7-1982 by way of clarification with regard to the full route fare as contained in Circular No. 625 dated 5-6-1982. The said corrigendum has nothing to do with the nature or quantum of penalty. The same does not provide for a substitution of the penalty provided for in the certified Standing Order. **In any event, certified Standing Order would prevail over such circulars.**”

(Emphasis supplied)

48. Therefore, to summarize the key takeaways of the findings of the Court, the same is stated as follows:

- a) The Audit Memo dated November 16, 2017 and Memo No. 2554/G-SE dated December 28, 2017 are held to have been issued without authority of law and is set aside on the grounds of being issued on irrelevant considerations and being manifestly arbitrary/discriminatory, in effect as per the law laid down in ***Subhasis Negel (supra)***.
- b) Pertaining to the State’s access to limited pool of resources which necessitated this purported rejig of policy in the first place, such argument stands self-demolished for the reason that employees of *State aided colleges and universities* are getting the full benefits of drawal of HRA, notwithstanding that their spouses might be engaged in private employment. With a lack of a certain legitimate objective being met by the State, this therefore, becomes a clear case of unreasonable classification and hence is violative of the tenets of equality enshrined under Article 14 of the Constitution of India.

- c) Notwithstanding the unreasonable classification which was carried out in the case of the petitioners which is patently violative of Article 14 of the Constitution of India, no technical or expert findings or relevant factors had been furnished by the State Respondents to justify the need for the alleged modification of such policy concerning the drawal of HRA, by the petitioners. There is no demonstration as to the extent of fiscal prudence sought to be achieved by the State by purportedly bringing into consideration the HRA of the spouses (engaged in private employment) of those employees who are serving in non-Government/Aided/Sponsored educational institutions, to trigger the common ceiling under the ROPA Memorandum of 2009 and thereby specifying the quantum of funds saved, by the public exchequer. Therefore, such an irregular policy decision merits an interference of this Court as per the principles laid down in ***Subhasis Negel (supra)*** and ***Federation of Railway Officers Association (supra)***.
- d) The impugned, clarificatory Corrigendum dated December 27, 2018 read with the Finance Department Memo No. 5839-F(P) dated July 9, 2012 is applicable in the matters of grant of HRA to a ***state government employee***, who are governed by the altogether *separate* West Bengal Service (ROPA) Rules, 2009 issued vide Memo No. 1691-F dated February 23, 2009 and for the self-same reason, it is inapplicable to the ***category of employees employed in non-government sponsored institutions***, who are governed by the ROPA Memorandum of 2009 for Non-Governmental Educational Institutions, issued by Memo. 46-SE(B) dated February 27, 2009.

e) The impugned, clarificatory corrigendum dated December 27, 2018 (which was issued post the initiation of the present litigation) in so far as it is inconsistent by including within its ambit employees who are serving in non- Government/Aided/Sponsored educational institutions is liable to be struck down for being violative of the Finance Department Memo No. 5839-F(P) dated July 9, 2012. The impugned, clarificatory corrigendum could not have risen above its source and is accordingly set aside to such degree of inconsistency as aforesaid.

49. In view thereof, the State Respondents are hereby directed to ensure complete conformity in the payment of HRA which is payable to the petitioners in accordance with the ceiling envisaged in the ROPA Memorandum of 2009 which is applicable to them along with any connected memos, that maybe applicable. If in any case, the payment of such HRA has been stopped in pursuance of the Audit Memo dated November 16, 2017, Finance Department Memo No. 5839-F(P) dated July 9, 2012, and Memo No. 2554/G-SE dated December 28, 2017 or other similar memos that have been issued by the various District Inspectors of Schools (S.E) across the State of West Bengal, the arrears of the same must be paid to the petitioners within six weeks from the date of this judgment.

50. Needless to state, the above direction shall also be applicable in cases where the State Respondents had proceeded to recover the purported excess HRA

that was paid to the petitioners with the direction that such recovered amount of purported excess HRA may also be repaid to the petitioners.

51. I would go amiss if I did not acknowledge the superlative assistance provided by the learned Advocate General and the learned counsels for both sides – Ms. Sengupta and Ms. Bhattacharya, in adjudicating the present *lis*.
52. In light of both the conclusion and directions thereof, this writ petition is allowed. There shall be no order as to costs.
53. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

**(Shekhar B. Saraf, J.)**