IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 132 of 2019

Upendra Nath Singh, aged about 63 years, son of Late Bisnu Dayal Singh, resident of Vaishnav Vihar, Middle School Road, Bartand, P.O & P.S. Dhanbad, District Dhanbad (Jharkhand)..... **Writ petitioner-Appellant**

Versus

1.Coal India Limited, through its Chairman, having its office at Coal Bhawan, Premise No. 04, Plot no. AF-III, Action Acra, New Town, Rajerhat, P.O & P.S Rajerhat, Kolkata -700156 (West Bengal).

2.Central Coalfields Limited, through the Chairman, having its office at Darbhanga House, Ranchi, P.O. G.P.O., P.S. Kotwali, District Ranchi (Jharkhand).

3.Director (Personnel), Central Coalfields Limited, having its office at Darbhanga House, Ranchi, P.O. G.P.O., P.S. Kotwali, Town & District Ranchi (Jharkhand).

4.General Manager, Dhori Area, Central Coalfields Limited, P.O Dhori, P.S. Phushro, District Bokaro (Jharkhand).

... **Respondents-Respondents**

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Appellant : Mr. Arpan Mishra, Advocate
For the Respondent : Mr. Amit Kumar Das, Advocate

Oral Judgment
Order No. 08 : Dated 7th December, 2020:

With consent of the parties, hearing of the matter was done through video conferencing and there was no complaint whatsoever regarding audio and visual quality.

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2. The instant appeal is listed under the heading for ‘Admission' and with the consent of learned counsel for the parties, the same is being disposed of at this stage itself.

3. This intra-court appeal is preferred against the order/judgment dated 14.12.2018 passed by learned Single Judge in W.P. (S) No. 7399 of 2016, whereby and whereunder the writ petition has been dismissed by declining to interfere with the order dated 22.09.2016 passed by the General Manager, Dhori Area, Central Coalfields Limited, herein after referred to as 'CCL', by which, the representation of the writ petitioner-appellant for claim of House Rent Allowance (in short 'HRA') has been rejected.

4. The brief facts of the case, which are required to be enumerated herein for proper adjudication of the *lis*, are as under:

The writ petitioner-appellant, an officer of Grade E-7 holding the post of Chief Manager (Excavation) at Dhori Area, CCL had made an application for payment of HRA for the period from September, 2010 to 31st October, 2015, but the same was not extended, which prompted the writ petitioner to file writ petition being W.P. (S) No. 3449 of 2016 and the writ Court vide order dated

11.07.2016 disposed of the writ petition directing writ petitioner-appellant to submit a representation before the respondents-CCL, who in turn, was directed to pass reasoned order and if the writ petitioner is found entitled for payment of HRA, the same was directed to be extended to him within the stipulated period.

Pursuant thereto, the writ petitioner-appellant submitted representation before the respondents-authority, who passed the reasoned order vide Ref. No. 1633 dated 22.09.2016 rejecting the claim of the writ petitioner-appellant for payment of HRA for the period September, 2010 to 31st October, 2015. However, HRA for the period February, 2010 to August, 2010 was paid to the writ petitioner-appellant.

Being aggrieved with the order dated 22.09.2016 passed by the respondents-authority, the writ petitioner-appellant invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India seeking declaration about his entitlement for payment of HRA for the period in question.

It was case of the writ petitioner-appellant before the writ Court that as per Rule 4.6 of the Coal India Executives House Rent Allowance Rules, 2010, herein after referred to as the "Rules, 2010", the writ petitioner-appellant is entitled for HRA for the period in question,

but the respondents-authorities without considering the said Rule, have illegally and arbitrarily rejected the claim of the writ petitioner-appellant.

The respondents-CCL, who had put their appearance through their counsel, Mr. A.K. Das, opposed the contention of learned counsel for the writ petitioner-appellant by making the submission that whatever amount the writ petitioner-appellant was entitled to had already been paid to him. However, the grievance of the writ petitioner, for payment of HRA with respect to rest period, cannot be redressed as he is not entitled to the same as the quarters was made available as per entitlement of the writ petitioner but the writ petitioner prefer to stay in his personal residence, hence he was not entitled for payment of HRA.

The writ Court, after going through the rival submissions of learned counsel for the parties dismissed the writ petition vide order dated 14.12.2018 by treating the factual aspect before the Court as disputed one, which is the subject matter of present intra-court appeal.

5. Mr. Arpan Mishra, learned counsel for the writ petitioner-appellant, by questioning the impugned order, has submitted that the fact in question cannot be said to be disputed one. It has been stated that the learned Single Judge while holding the factual aspect to be

disputed one has not assigned any reason that the fact is disputed one.

According to learned counsel for the writ petitioner-appellant, the quarters which was allotted to the writ petitioner-appellant was not allotted as per his entitlement. It is further case of the writ petitioner-appellant that even accepting the fact that the quarters was allotted in favour of writ petitioner-appellant but the allotment of the said quarters cannot be construed to be legal since the same was contrary to the entitlement of the Rules, 2010 as he was allotted the quarters, for which, he was not entitled to. Therefore, even if the quarters was allotted in his favour, the same being allotted contrary to the statutory Rules, will be said to be nullity in the eye of law, but this aspect of the matter has not been appreciated by the learned Single Judge and merely recording that the factual aspect of the case is disputed one, dismissed the writ petition.

6. Mr. A.K. Das, having put appearance to represent the respondents-CCL, has defended the order passed by the learned Single Judge by taking a plea that the writ petitioner was allotted quarters time and again but he has chosen not to occupy the same rather he has chosen to live in his own residence, therefore, according to him once quarters was allotted and if the writ petitioner

chosen not to reside in the said quarters, he is not entitled for the HRA.

According to Mr. Das, since the quarters was allotted time and again, which though has not been occupied by the writ petitioner-appellant, but before the writ Court, the writ petitioner-appellant claimed that quarters was never allotted to him, therefore, the writ Court has rightly come to the conclusive finding that the issue involved is disputed one, which cannot be decided by the writ Court, hence the order passed by the learned Single Judge suffers from no infirmity.

7. We have heard learned counsel for the parties and perused the materials available on record as also the finding recorded in the impugned order.

The dispute in question about entitlement of HRA for the relevant period has been reflected in the impugned order, passed in pursuance to the order passed in W.P. (S) No. 3449 of 2016. It is evident from the relevant provision under the caption "entitlement of HRA" that HRA would be applicable to be paid to an executive who has not been allotted company's accommodation and has taken a house of rent. Further the provision contains that an executive who refuse or surrenders accommodation offered to him by the company shall not be eligible for House Rent Allowance except for those executives who

surrender the company's accommodation to reside in the House owned by him/wife/children/father/mother.

For ready reference, the relevant clause "Clause 4. Entitlement of HRA" of Coal India Executive House Rent Allowance Rules, 2010, is reproduced hereunder as:

> *"**4.Entitlement of HRA***
> ***4.1**.An executive who has not been allotted company's accommodation and has taken a house on rent is entitled for House Rent Allowance.*
> ***4.2**.An executive who refuse or surrenders accommodation offered to him by the company shall not be eligible for House Rent Allowance except for those executives who surrender the company's accommodation to reside in the House owned by him/wife/children/father/mother. "*

It is, thus, evident that the executive who has not been allotted company's accommodation and has taken a house on rent is entitled for House Rent Allowance and further the executive who refuse or surrenders accommodation offered to him by the company shall not be entitled for HRA.

8. It is admitted fact herein that the writ petitioner was allotted B-type quarters and C-Type quarters without his consent. It is further admitted by the respondents-CCL that by virtue of his designation, the writ petitioner-appellant was entitled for 3(A)/(D) Type Quarters. It is also admitted that B-type and C-type quarters were

offered to the writ petitioner-appellant but it was never occupied by him.

9. We, keeping this fact into consideration since the same was not in dispute, had directed the respondents vide order dated 19.10.2020 to file an affidavit as to whether an employee who is entitled for 3 (A)/(D) Type Quarters can be offered B-Type or C-Type Quarters without his consent and if it is offered but not occupied by the employee concerned whether his House Rent Allowance is liable to be deducted.

For ready reference, order dated 19.10.2020 is quoted hereunder as:

> *"Let an affidavit be filed by the C.C.L., as to whether an employee who is entitled for A-Type Quarter can be offered B-Type or C-Type Quarters without his consent and if it is offered but not occupied by the employee concerned whether his house rent allowance is liable to be deducted.*
>
> *We are making this query in view of the fact that such issue arose during course of hearing. The opinion of the CCL authority should be based upon certain documents, Rules or Regulations etc.*
>
> *Put up this matter on 23rd November, 2020."*

Pursuant thereto, the respondents-CCL has filed affidavit replying the query made by this Court. Paragraph 4 thereof refers about the provision, under Clause No. 3, with respect to entitlement and allotment of quarters, which is annexed at Annexure A to the affidavit dated 04.12.2020, reads hereunder as:

"3.ENTITLEMENT OF TYPES OF QUARTERS:

The Executive grade employee will be entitled for the following types of quarters:-

Grade of Executives		***Types of Quarter Entitled***
A.Director/ED/CGM Incharge	*:*	*3(c)/3(b) type*
B.M-2 & M-3 grade	*:*	*3(a) & D type*
C.M-1 grade	*:*	*2(c) type*
D.E-5 grade	*:*	*2(b) type*
E.E-1 to E-4 grade	*:*	*2(a) & C type*

Employees will be considered for allotment of types of quarter as per above entitlement only. Normally executives will not be considered for allotment of lower types of quarters than their entitlement, but in exceptional cases management may allot a lower type of quarter to an executive out of the management quota on specific approval of the competent authority and with consent of the applicant.

Allotment will be considered based on the seniority of the executives of the entitled type of quarters determined on the date of initiating the proposal. However, such an executive in E-4 promoted to E-5 and above who have not been allotted any type of Company's accommodation prior to their promotion to the next higher grades may be considered for allotment of quarter based on their seniority and entitlement of pre-promoted grades provided:

They exercise 'one time option' in writing to the Officer Incharge dealing with allotment of quarters directly within 30 days of their assumption of the charges of the promoted post by hand under proper receipt with clear mention that he is not interested to be considered for higher types of entitled

quarter on promotion to higher grade. Such option shall not be applicable for allotment of quarters from lower type to higher type or for change of quarter on mutual basis."

It is evident from the aforesaid provision that employees will be considered for allotment of quarters as per above entitlement only. Normally, the executives will not be considered lower type of quarters than their entitlement but in exceptional cases management may allot a lower type of quarters to an executive out of the management quota on specific approval of the competent authority and with the consent of the applicant. It has further been provided that allotment will be considered based on the seniority of the executives of the entitled type of quarters determined on the date of initiating the proposal. However, such an executive in E-4 promoted to E-5 and above who have not been allotted any type of Company's accommodation prior to their promotion to the next higher grades may be considered for allotment of quarters based on their seniority and entitlement of pre-promoted grades provided, they exercise 'one time option' in writing to the Officer Incharge dealing with allotment of quarters directly within 30 days of their assumption of the charges of the promoted post by hand under proper receipt with clear mention that he is not interested to be considered for higher types of entitled quarters on

promotion to higher grade. Such option shall not be applicable for allotment of quarters from lower type to higher type or for change of quarter on mutual basis.

It further appears from the decision of the authority as contained in OFFICE/29/4519/2020-Legal, CCL HQ, wherein the entitlement of types of quarters have been reflected at clause D-2 showing therein the entitlement of the quarters for executive grade employees.

For ready reference, the same is being quoted hereunder as:

"D-2 Entitlement of types of quarters:

The Executive grades employees will be entitled for the following type of quarters:-

SL NO.	GRADE OF EXECUTIVES	TYPE OF QUARTER ENTITLED
1	Director/ED/CGM	Bunglow/3(C)/3(B) type
2	E-7 & E-8 Grade	3(A)/(D) type
3	E-6 Grade	2(c)type
4	E-5Grade	2(B) type
5.	E-1 to E-4 Grade	2(A) & C type

It is evident from the chart, as quoted herein above, about entitlement of types of quarters, wherein for Executive Grade E-7, in which the writ petitioner-appellant falls, is entitled for 3(A) or (D) type quarters.

10. Admitted position herein is that writ petitioner-appellant at the relevant period of time was at Grade E-7 but he was not allotted quarters according to his entitlement rather he was allotted the quarters being Quarter No. C-02 on 30.08.2010, again Bungalow No. B-

63 vide order dated 31.03.2013 and thereafter, Bungalow No. C-29 vide order dated 26.05.2015. Therefore, it is admitted fact that the quarters had not been allotted to the writ petitioner-appellant according to his entitlement.

11. If we travel across the provision as contained in Rule 4 of Rules, 2010, pertaining to entitlement of quarters, the same speaks that in a case if the executive has not been allotted company's accommodation and has taken a house on rent will be entitled for HRA, but, if an executive refuses or surrenders accommodation offered to him by the company shall not be eligible for HRA.

12. The question is that when the word entitlement has been reflected in Clause 4 of the Rules, 2010 which means entitlement as per law applicable, if any quarters has been allotted contrary to the Rules of entitlement, as under Clause 4, and the chart referred herein above, will such entitlement/allotment of quarters being contrary to the statutory provision be said to be nullity in the eye of law?

13. In view of discussions made herein above, if the writ petitioner-appellant had refused to accept the accommodation allotted to him contrary to his entitlement the same cannot be said to be an illegal action on the part of the writ petitioner-appellant. The normal corollary would be that any quarter, if allotted

contrary to the statutory provision, will be said to be nullity and in that circumstance it will be construed to be non-allotment of the quarters in favour of writ petitioner-appellant.

In view thereof, contention and the ground agitated by learned counsel for the writ petitioner-appellant about non-allotment of quarters cannot be said to unjustified and once the quarters has been held to be allotted contrary to the statutory rules, the writ petitioner-appellant will be held entitled for HRA.

14. We, after going through the finding recorded by the learned Single Judge, are of the view that the learned Single Judge ought to have considered entitlement aspect of the matter at length but the writ petition was dismissed holding that the issue involved in the writ petition is disputed question of fact which cannot be decided by writ Court, cannot be said to be proper and legal.

15. Considering the facts, as stated above, and taking into consideration the fact that quarters said to be allotted in favour of the writ petitioner-appellant held to be contrary to the statutory provision, the said allotment said to be no allotment in the eye of law and in that view of the matter, the writ petitioner-appellant was entitled for HRA for the period in question. Therefore, conclusion

arrived at by the learned Single Judge that the issue involved is disputed one, suffers from infirmity and as such the impugned order passed by the learned Single Judge requires interference by this Court.

16. Accordingly, the instant appeal stands allowed and the writ petition filed by the writ petitioner is allowed.

17. In consequence thereof, the respondents-CCL is directed to disburse the amount of HRA for the period September, 2010 to 31st October, 2015 within a period of three months from the date of production/receipt of copy of this order.

(Dr. Ravi Ranjan, C.J.)

(Sujit Narayan Prasad, J.)

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