



WEB COPY

WP(MD).No.5289 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 09.09.2020
DELIVERED ON : 16.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.5289 of 2012 and
M.P(MD).No. 1&2 of 2012 and
WMP(MD).No.13928 of 2016

N.J. Selvakumar

: Petitioner

Vs.

1.The Deputy Director,
Health Services,
Krishnan Kovil,
Nagercoil,
Kanyakumari District.

2.The Block Medical Officer,
Govt. Primary Health Centre,
Kothanallur,
Mekkamandapam (Post),
Kanyakumari District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ Certiorarified Mandamus calling for the impugned records in the proceedings in Na.Ka.No.1152 / A1/12, dated 04.04.2012 on the file of second respondent and to quash the same and consequently, directing the first respondent to refund the HRA collected from the petitioner.

For petitioner : Mr.F. Deepak

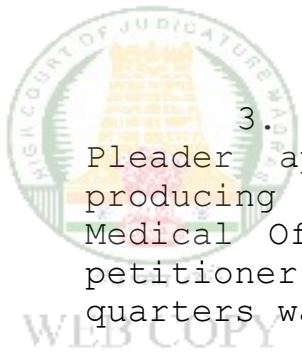
For Respondents : Mr.N. Shanmugaselvam

Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the impugned proceeding of the second respondent passed in Na.Ka.No.1152 / A1/12, dated 04.04.2012 and consequently, direct the first respondent to refund the HRA collected from the petitioner.

2. The petitioner herein was working as a Pharmacist under the second respondent Primary Health Centre and he was offered the post attached quarters. The petitioner has made a request to stay in his own house. But, the said request was rejected by the respondents and they have ordered rental recovery from the pension. Challenging the same, the petitioner has filed the Writ Petition.



3. Mr. N. Shanmugaselvam, learned Additional Government Pleader appearing for the respondents draw my attention by producing the the letter given by the second respondent / Block Medical Officer, dated 04.11.2009, whereby, the request of the petitioner to stay in the own house instead of post attached quarters was rejected.

4. The respondents in their counter has categorically stated about the quantum of amount that has to be deducted as House Rent Allowance and the place of his working falls under Grade II in as much as, the request of the petitioner residing in his own house was rejected by the second respondent. It is incumbent upon the petitioner to occupy the quarters, but, without occupying the same, he cannot claim HRA.

5. The learned counsel appearing for the petitioner filed rejoinder and submitted that the petitioner has not occupied the quarters and hence, the House Rent Allowance cannot be deducted.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. Factual position of post - attached quarters, in the instance as follows:

About 385 block level Primary Health Centres and 1185 Additional Health Centres are functioning in Tamil Nadu to render Medical and Preventive Services to the people of the rural areas where neither adequate Medical facilities nor Transport facilities are available. To have this service each block level Primary Health Centres have residential quarters attached with the following posts in order to utilize the service of the incumbents of these posts at any time during emergency. Viz., 1) Medical Officers 2) Pharmacist 3) Auxiliary Nurse Midwives 4) Sector Health Nurse 5) Driver 6) Male Nursing Assistant 7) Sweeper.

8. Rule Positions: Rule 4 under Rule 44 of Fundamental Rules Stipulates that in cases of refusal of allotment of Government Quarters house rent allowance will not be admissible from the date of allotment of Government Quarters.

9. The Service matrix of the petitioner as follows:

The petitioner had joined duty in Primary Health Centre, Kothanallur on 06.08.2009 on transfer from ITI dispensary Konam at Nagercoil. Hence, he should have taken over the quarters on the date of joining duty itself. On refusal to do so the Block Medical Officers in his letter dated 04.11.2009 had instructed the petitioner to take over the Quarters not rent free quarters as



claimed by the petitioner since rent free quarters are provided only to the employees in the grade pay of Rs.1900/- and below.

10 (a) House Rent for others, the rent recovery is as follows:

S.No.	Pay rate	Grade (a) and (b) places	Grade II Places	Grade III places	Others
1	6000-10199	1.5%	1.5%	1	1
2	10200-18599	3%	3%	3	2
3	18600 and above	4%	4%	4	3

10(b). Considering the fact that the place of working falls under Grade II places and he is drawing the pay of Rs.20340/-. The Rent recovery for the quarters attached to his post is fixed at 4% of Pay drawn by him in addition to forgoing HRA.

11. While things be so, it appears that the petitioner is using the tactics of submitting repeated representations to the Block Medical Officers all along his service in this station. He has been drawing House Rent allowances till date. Since no deductions of rent by way of either deducting HRA of HRA + 4% pay drawn by him has been made so far. Thus, the question of refund of HRA does not arise for consideration at all.

12. Moreover HRA is not a matter of right. It is in lieu of the accommodation not made available to the employee. Admittedly, Sub Rule 5 of Rule 45 of Fundamental Rule, an incumbent whether permanent or temporary of an appointment for whose benefit a house has been constructed, purchased or leased by Government will be held responsible for the prescribed rent during his tenure of the appointment.

In this Rule the following exemption have also been made:

(i) Whether an officer is holding as a temporary measure and appointment to which a Government residence is attached, in addition to his substantive appointment.

(ii) When an officer is addition to the duties of such an appointment carries on the duties of another appointment which preclude him from occupying the house.



(iii) When an officer is officiating in an appointment for a period not exceeding one month and does not wish to occupy the house.

(iv) When an officer is officiating in an appointment for a period not exceeding two months and the circumstances are such as to preclude him from occupying the house.

(v) An officer who is merely discharging the current of routine duties of an appointment to which an officer's residence is attached is not found to occupy it and should not be considered as incumbent of the appointment for the purpose of recovery of rent.

13. But, in respect of the petitioner he has neither been deputed from any where nor given any additional charges. He has been working in this station, from 06.08.2009 to till date on transfer from ITI Dispensary, Konam. Hence, rent recovery to the quarters attached to his post and thus allotted to him should invariably be made without any deviation from 06.08.2009, the date of joining duty in this station on transfer and hence, the case of the petitioner does not fall under any exemption above.

14. G.O.Ms.No.490, dated 23.05.1983 P & AR (FR III) Department is not an acceptable one, since the said Government Order contains a notification of the following amendment:

Amendment

In the said Fundamental Rules, in rule 44, under the heading "instruction", in instruction 4, after clause (b), the following Clause shall be added, namely:

(c) When a Government Servant, occupying rent free quarters at the station at which he enters leave, vacates such Quarters, he shall be paid house rent allowance from the date of vacation of the Quarters at the rate otherwise admissible to him at the station, if admissible to him at the station, if rent-free quarters, had not been attached to that post.

Since this amendment speaks about the Government Servant occupying rent free Quarters and vacating Quarters on entering leave, it is not in any way related to him as he has been provided with rented Quarters attached to his post and has to pay rent above and further he has not been availing any leave beyond 15 days during his service in this station. As such, this Government Order is absolutely not related to his case.

<https://hcservices.ecourts.gov.in/hcservices/> 15. Providing housing accommodation to employee by



Government / Management / Organizations is part of welfare measures, extended to the employee under the Welfare Legislations. Rent free quarters and post-attached quarters are two different categories. While the former is also attached with the post of employment, however, no amount is levied from the employee for its occupation. However, in the latter, the quarters is attached to the post, he has to pay rent for its occupation, as fixed in the schedule, annexed with, the rules framed therefore.

16. In certain category of quarters, the employee can seek exemptions from occupying the post attachment quarters on genuine reasons and there are many incidence of that kind is in vague. However, any unilateral actions of employee of non-occupation of post attached quarters will not exonerate him from deductions of HRA from his salary.

17(a). The Government of Tamil Nadu taking into consideration of necessity for providing Rural Health Care to people in living hamlet villages, hill stations and has taken note of the essential requirement of Medical / Para Medical Staff, posted in such places, have constructed the housing quarters as post attached quarters and also framed necessary rules and regulations therefor.

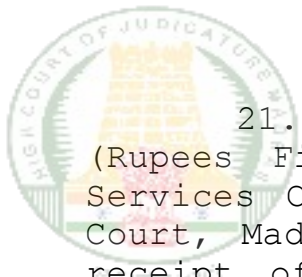
17(b) The primary object of providing post-attached quarters for these categories of public health sector employees ranging from qualified Medical Officer to Nursing Assistant is that as such any person appointed to the above posts should occupy the residential quarters attached to their posts for rendering their best service to the rural people.

17(c) In the absence of any order of exemptions, exempting him from occupation of posts -attached quarters, the employee cannot claim refund of HRA deducted from his salary on the ground of his unilateral action of his own decisions for non - occupying post attached quarters.

18. Similar view is expressed in the order passed in W.P.No.6323 of 2010, which was filed by one S. Thamizh Selvi, Pharmacist Government Primary Health Centre, Melpennathur, Thiruvannamalai District and this Court has dismissed the similar petitions filed by the similar persons.

19. I am of the considered view that the order passed by the respondent concerned is sustainable in law, therefore, the Writ Petition is devoid of merits.

20. Accordingly, this Writ Petition is dismissed with cost of Rs.5,000/-. Consequently, connected Miscellaneous Petitions are closed.



21. The petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) as cost to the High Court Legal Services Committee attached to the Madurai Bench of Madras High Court, Madurai, within a period of eight weeks from the date of receipt of a copy of this order, failing which, the official respondent is directed to deduct the said amount from his salary and remit the same to the High Court Legal Service Committee attached to the Madurai Bench of Madras High Court, Madurai, within a period of eight weeks thereafter.

Sd/-

Assistant Registrar (CRL.SIDE)

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Sub Assistant Registrar(CS)

trp

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Deputy Director,
Health Services, Krishnan Kovil,
Nagercoil, Kanyakumari District.

2.The Block Medical Officer,
Govt. Primary Health Centre,
Kothanallur, Mekkamandapam (Post),
Kanyakumari District.

Copy to

The Officer Incharge,
High Court Legal Services Committee,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.F. DEEPAK, Advocate (SR-17342[F] dated 18/09/2020)

ORDER MADE IN
WP(MD).No.5289 of 2012
16.09.2020

SCR(CO)

KM (23.09.2020) 6P 5C

<https://hcservices.ecourts.gov.in/hcservices/>