

**W.P.A. 13747 of 2018
(Through Video Conference)**

**Aparajita Pal
Vs.
State of West Bengal & ors.**

**Mr. Suvro Prokash Lahiri
...for the petitioner**

**Ms. Chaitali Bhattacharya
Mr. Kartick Chandra Kapas
... for the State**

The petitioner is an assistant teacher of Baidyabati Vidyaniketan High School(H.S.). The petitioner used to receive House Rent Allowance (HRA) from the date of her appointment. The petitioner received house rent allowance to the tune of Rs.2858/- as the last payment of HRA for February 2018. From March 2018 the HRA was stopped. Upon enquiry, the petitioner came to learn that under Memo No. 68-ES/Audit/12A-47/17 dated November 16, 2017, admissibility of HRA in respect of school teachers had been restricted with an upper ceiling limit of Rs.6000/-. The petitioner came to know that by an earlier Memo No. 5839(F)P dated July 9, 2012, the prohibitions had been imposed disallowing the HRA above the ceiling limits by taking in account the HRA earned by spouses of such persons who were also working in private organisation. It appears that salary slip or certificate of the

spouse working under the Government or PSUs or private concern was to be supplied by the teacher for calculation of the ceiling limit of the HRA per month.

It was further clarified by the Government by a memo dated December 28, 2017 that even in case of school teachers, the HRA given to the spouse who was in employment of a private concern would be taken into consideration for calculating the ceiling limit prescribed under Memo No. 68-ES/Audit/12A-47/17 dated November 16, 2017. Accordingly, the petitioner's HRA was stopped, as the petitioner's spouse was an employee of a private concern earning HRA. By an interim order the HRA was again directed to be paid to the petitioner.

Similarly situated school teachers moved several writ petitions before this Court.

By a judgment dated March 16, 2021 passed in Mousumi Biswas & Ors. vs. State of West Bengal & Ors., those writ petitions were disposed of by a coordinate Bench of this Court with a direction that the petitioners therein/school teachers would be entitled to receive HRA in terms of ROPA 2009 to which they would be otherwise entitled but for the memoranda dated November 16, 2017, July 9, 2012 and December 28, 2017. In case of any stoppage of payment of HRA on the strength of the Memoranda dated July 9, 2012 and December 28, 2017 or other similar memos, arrears towards payments of HRA

was also directed by this court.

The learned Court held that denying the HRA to the school teachers over and above the ceiling limit by calculating the HRA paid to the spouse of such school teachers working in private concern was violative of Article 14 of the Constitution of India and was creating a class within a class, in view of the fact that the employees of the State aided colleges and universities were getting full benefits of HRA.

In view of the ratio laid down in the aforesaid judgment in the matter of Mousumi Biswas & Ors. (supra), this Court is persuaded to agree with His Lordship for the reasons assigned by His Lordship and hence directs that the petitioner shall be entitled to HRA as per ROPA 2009, consequently revised under ROPA 2019.

Moreover, the doctrine of Comity of Courts persuades this Court to accept the decision of the co-ordinate Bench dated March 16, 2021 passed in Mousumi Biswas(supra). The reasons supplied by His Lordship is accepted by this Court. No appeal has been preferred therefrom. Atleast 25 other similar matters have been disposed of by the said judgment.

The Hon'ble Apex Court had observed in Neon Laboratories Ltd. v. Medical Technologies Ltd, reported in (2016) 2 SCC 672, that a Court must give due deference to the enunciation of law made by another Court unless the

reasons assigned by such Court giving the decision were contrary to law or incomprehensible. A similar view was taken in the decision of Nirendra Kumar Saha v. Steel Authority of India Ltd reported in 2009 SCC OnLine Cal 619, where it was held that the doctrine of Comity of Courts demanded that Courts should adopt a consistent and uniform approach towards administration of justice by taking adequate care to ensure elimination of conflicting orders.

Under such circumstances the writ petition is allowed. The petitioner shall not suffer any deduction of HRA upon application of Memos dated July 9, 2012, November 16, 2017 and December 28, 2017. HRA shall be paid as per relevant ROPA.

Arrears payable to the petitioner from March 2018 to July 2018 shall be paid within a period of four weeks from the date of communication of this order as per the admissible ROPA Rules.

The writ petition is, thus, disposed of.

There will however be no order as to costs.

All parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar,J.)

