

29.06.2022
Item No. 40
Ct. No. 25
PG

W.P.A. 2742 of 2018
Arundhati Nanda Goswami & Anr.
Vs.
The State of West Bengal & Ors.

Ms. Debjani Sengupta
Ms. Shreya Bhattacharjee
Mr. Abhijit Chatterjee
Ms. Shahina Haque
Ms. Koyel Bag.....for the petitioners

Ms. Chaitali Bhattacharya
Mr. Kartick Ch. Kapas.....for the State

Affidavit of service filed in Court today is
taken on record.

The writ petitioners are Assistant Teachers of
Bansdrani Benoy Balika Vidyalaya. Their respective
husbands are working in private organisations. The
writ petitioners have alleged that the house rent
allowance was suddenly stopped for the month of
January, 2018, which compelled the writ petitioners
to file this writ petition.

In the writ petition, the petitioners have
prayed for issuance of writ to set aside and quash the
Memo No. 5839-F(P) dated 9th July, 2012 issued by
the Secretary, Finance Department , Government of
West Bengal, Memo No. 68-ES/Audit/12A-47/17
dated 16th November, 2017 issued by the Special

Secretary, School Education Department and the Memo No. 2120/M dated 15th December, 2017.

It has been submitted by Ms. Sengupta, learned advocate for the petitioners that pursuant to the interim order passed by this Court on February 08, 2018, the petitioners are at present enjoying the house rent allowance, which was initially stopped. She submits that during the pendency of the writ petition, a coordinate Bench of this Court in a batch of writ petitions in the case of Mousumi Biswas & Anr. Vs. The State of West Bengal & Ors. in W.P.A. No. 1389 of 2018 passed a judgment and order on March 16, 2021 wherein the aforesaid memos issued by the authorities were struck down and the coordinate Bench directed the authorities to ensure complete conformity in the payment of HRA in accordance with the ceiling envisaged in the ROPA Memorandum of 2009 and a direction was passed to pay the arrear House Rent allowance.

She submits that since the petitioners are similarly situated to that of the batch petitioners in the case of Mousumi Biswas & Anr. (supra), the petitioners are entitled to a similar order in this matter.

Ms. Bhattacharya, learned counsel appearing for the State submits that against the said decision of the coordinate Bench an appeal being

M.A.T. 1023 of 2021 has been filed and the same is pending before the Hon'ble Division Bench. However, on a query of this Court, Ms. Bhattacharya, learned counsel, in her usual fairness, submits that to the best of her knowledge, no interim order staying operation of the judgment of the coordinate Bench in the batch petitions of Mousumi Biswas & Anr. (supra) has been passed as yet. However, she submits that since an appeal is pending before the Hon'ble Division Bench, judicial propriety demands that hearing of the matter is to be adjourned till the decision in the aforesaid appeal.

In reply, Ms. Sengupta submits that a coordinate Bench of this Court on an identical issue, after taking note of the said submission advanced by the learned advocate for the State has passed an order following the decision of the coordinate Bench in the batch petitions in the case of Mousumi Biswas & Anr.(supra).

Ms. Sengupta submits that though the petitioners have received the house rent allowance after passing of the interim order in this matter but the house rent allowance for some months are still in arrears.

The issue as to whether the State can curtail the right of the petitioners to draw HRA on the premise that their spouses, who are employed in

private organisations are receiving separate HRA and thereby triggering the ceiling envisaged by the ROPA Memorandum of 2009 by issuing the clarificatory Memorandum was raised in Mousumi Biswas & Anr. and decided by the coordinate Bench by the judgment and order dated 11th March, 2021. The relevant portion of the said judgment is extracted below:

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

*a)******

*b)******

*c)******

*d)The impugned, clarificatory Corrigendum dated December 27, 2018 read with the Finance Department Memo No. 5839-F(P) dated July 9, 2021 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.”

It was further observed therein that 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 dated July 09, 2012 and the memo dated December 28, 2017 issued by the various District Inspectors of Schools, the arrears of the same must be paid to the petitioners within six weeks from the date of this judgment.

The issue involved in this writ petition is also identical with the issue decided in Mousumi Biswas (supra). The said decision will squarely apply to the case of the writ petitioners.

It is well-settled that pendency of an appeal does not operate as a stay of the judgment and decree impugned in the appeal. Furthermore coordinate Bench of this Court in an identical matter being WPA 15667 of 2021, after taking note of the pendency of the appeal held that the judgment of the coordinate Bench in the case of Mousumi Biswas & Anr.(supra) still holds good. Therefore, the prayer of Ms. Bhattacharya for adjournment of hearing the writ petition is rejected.

In view thereof, this Court directs the State to release the arrear house rent allowance benefits to the petitioners in terms of the applicable rules (excluding the impugned memos) within a period of eight weeks from the date of communication of this order.

The State shall go on paying the current house rent allowance benefits to the petitioners as if

the impugned memos are not in force. It is however, made clear that this order shall abide by the final decision in M.A.T. 1023 of 2021.

The respondent authorities are directed to take immediate steps in terms of this order and to ensure that the arrear payments are released within the time limit indicated hereinbefore. Petitioners are directed to communicate this order to the respondent authorities.

The writ petition accordingly stands disposed of with the above directions.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(Hiranmay Bhattacharyya, J.)