

10.08.2022
ct no. 13
Sl No.23
ap

W.P.A. No. 15508 of 2022

**Smt. Mitali Sarkar
-Versus-**

The State of West Bengal & Ors.

Mr. Ratul Biswas,
Mr. Kaushik Chowdhury,
Mr. Ishan Bhattacharya.

....for the petitioner

Mr. Raja Saha,
Ms. Piyali Sengupta.

.....for the State

Affidavit-of-service filed in Court today be
taken on record.

The writ petitioner is an Assistant Teacher under the State. The subject matter of challenge is Memo No. 5839-F(P) dated July 9, 2012 and Corrigendum dated December 27, 2018, issued by the Secretary, Finance Department, Government of West Bengal and the Memo No. 68-ES/Audit/12A-47/17 dated November 16, 2017, issued by the Special Secretary, School Education Department, Government of West Bengal.

House Rent Allowance paid to Assistant Teachers under the State is normally linked to the HRA paid to their spouses who are also employed with the State Authority. The object is to ensure

that a double benefit of HRA is not availed by a couple staying under the same roof.

The impugned memos however, sought to apply the said rule even to those Assistant Teachers whose spouses are employed in Non-State private organization.

As a consequence whereof, such persons like the petitioner are either denied HRA or allowed the same only to a limited extent under a ceiling. The issue was gone into and addressed in great detail by a Co-ordinate bench of this Court. A series of writ petitions were heard on the issue, and judgment was delivered inter alia, in WPA 1389 of 2018 (**Mousumi Biswas and another vs. State of West Bengal and others**) on March 16, 2021.

“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 nonGovernment/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 nongovernment 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.”

Counsel for the State would argue that an appeal has been preferred by the State being MAT No. 1023 of 2021 against the said judgment and order, which is since pending. The said judgment dated 16th March, 2021, has not been stayed by the Division Bench.

The said judgment is therefore in force and holds good even as on date.

This Court is in complete agreement with the views expressed by His Lordship of a Co-ordinate Bench in the case of Mousumi Biswas (supra).

In that view of the matter, this Court directs the State to first release HRA benefits to the petitioner in terms of the applicable rules (excluding the impugned Memos), together with complete arrears till date. Any recoveries already made, shall be refunded to the petitioner, within a period of six weeks from date. Any order of recovery still pending, shall remain automatically stayed.

The petitioner shall continue to receive HRA as if the impugned Memos are not in force.

Needless to mention, the aforesaid order shall abide by the final result of MAT No. 1023 of 2021.

For the purpose of complying with the aforesaid order, the School authority shall forthwith send appropriate requisition/bills and/or calculations to the D.I. of Schools, who shall release payment, within the time stipulated hereinabove.

With the aforesaid observations, the writ petition shall stand disposed of.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)