

02.02.2022
Sayandeep
Sl. No. 04
Ct No. 05

WPA 18616 of 2021

[Via Video Conference]

Nurul Islam Khan
vs.
Union of India & Ors.

Mr. Subhabrata Datta
..... for the petitioner
Mr. Pranit Bag
Mr. Victor Chatterjee
Mr. Partha Banerjee
..... for the I.M.U
Mr. Ashok Prasad
..... for the U.O.I

The petitioner seeks implementation of a decision taken by the Executive Council of the Indian Maritime University (I.M.U) at its meeting held on 28th September, 2016 in terms of extending the benefits of the pay revision of the 7th Central Pay Commission in relation to grant of House Rent Allowance (HRA) to the petitioner.

The petitioner was appointed to the post of Plate Boy in the Marine Engineering and the Research Institute Mess, in short MERI Mess on 26th May, 1992. The MERI Mess operates under the Indian Maritime University (I.M.U), Kolkata Campus.

According to the learned counsel appearing for the petitioner, the Office

Memorandum dated 7th July, 2017 issued by the Ministry of Finance, Government of India provides for fixation of the rate of HRA per month at 24% of the Basic Pay and was to be made effective from 1st July, 2017. Counsel relies on a communication dated 15th January, 2018 from the Asst. Director General of Shipping, Ministry of Shipping to the Vice-Chancellor of the I.M.U requesting the release of the revised HRA and other benefits with effect from 1st July, 2017 as per the 7th Central Pay Commission.

Counsel also relies on an order passed by a learned single judge on 9th April, 2019 in WP No. 7209(W) of 2019 (*Korban Khan Vs. Union of India & Ors.*) by which the Vice-Chancellor of the I.M.U was directed to release the leave encashment benefit to the petitioner within a certain time frame. Counsel submits that the petitioner is a “deemed deputationist” in I.M.U under Section 49(i) of The Indian Maritime University Act, 2008 and supports this contention by way of a Consent Letter dated 19th November, 2010 written by the petitioner to the Ministry of Shipping and the Vice-Chancellor of the I.M.U.

Learned counsel appearing for the Indian Maritime University opposes the prayer in the writ petition by stating that the benefit of the revised rate of HRA under the 7th Pay Commission cannot be extended to the petitioner since the petitioner is not an employee of the I.M.U. Counsel relies on Section 34 of the 2008 Act to submit that the University has to enter into written contract of service with every employee of the University on certain terms and conditions and that the petitioner has failed to furnish any such document. Counsel submits that the documents relied on have been issued by the MERI Mess and not by the I.M.U and further that the Resolution dated 7th July, 2017 which has been relied upon by the petitioner only applies to Central Government employees.

The case made out by the petitioner for the relief prayed for must be seen on the strength of the documents which have been brought on record by the parties. First, the Minutes of the Meeting of the Executive Council of the I.M.U dated 28th September, 2016 shows that the Executive Council resolved to extend the benefits of the pay revision of the 7th Pay Commission to the MERI Mess employees. The Executive Council based this

Resolution on the recommendation of the Finance Committee vide its Resolution dated 28th September, 2016. Second, the Office Memorandum dated 7th July, 2017 revised the rate of HRA payable per-month to 24% for the 'X' classified cities. The list of classification of cities for grant of HRA is part of the Office Memorandum and reflects Kolkata as an 'X' classified city. The Office Memorandum provides in Clause 8 that this order was to be effective from 1st July, 2017. Third, the communication from the Asst. Director General of Shipping to the Vice-Chancellor of I.M.U dated 15th January, 2018 requests the latter to release certain benefits including the revised HRA to the Mess employees with effect from 1st July, 2017.

The above documents are inconsistent with the objection taken on behalf of the I.M.U that the petitioner does not qualify for the benefit of revised HRA since the petitioner is not an employee of the I.M.U. The salary-slip of the petitioner for the month of July, 2021 describes the petitioner as 'employee'. Thus, even as in July, 2021 the petitioner was recognised as an employee by the MERI Mess and the I.M.U. None of the material documents, namely the Resolution of the Executive

Council of I.M.U, the Office Memorandum or the letter of the Asst. Director General of Shipping make any distinction between employees of I.M.U and employees of MERI Mess. In fact, the Resolution of the Executive Council of the I.M.U dated 28th September, 2016 specifically mentions that the benefits of the pay revision of the 7th Pay Commission would be extended to the MERI Mess employees. The letter of the Asst. Director General of Shipping of 15th January, 2018 also mentions that rights and privileges of "MERI Mess employees" have been curtailed.

Admittedly, the petitioner is a deemed deputationist of I.M.U which would be evident from the Consent Letter dated 19th November, 2010. Under Section 49 (i) of The Indian Maritime University Act, 2008 the employees of the four training institutes under the I.M.U, including the Marine Engineering and Research Institute, Kolkata who are transferred to I.M.U shall have the option to continue on deemed deputation in Indian Maritime University and be entitled to certain Government facilities till their retirement. Besides, the I.M.U is under an obligation to carry out the directions of the Directorate General of Shipping,

Ministry of Shipping, as indicated in the letter of 15th January, 2018 to I.M.U as per Section 50 (1) of the Act which provides that the University shall, in discharge of its functions under the Act, be bound by the directions on questions of policy as the Central Government may give in writing to it.

The stand of the Union of India, as evident from the submissions of the learned counsel, is reflected in the letter of the Directorate General of Shipping dated 15th January, 2018 and supports the case of the petitioner.

The emphasis placed on behalf of I.M.U. on Section 34 of the Act, namely on a written contract of service between the University and the employee, loses relevance when pitted against the decisions of the University/ I.M.U and the documents released by it. The Resolution of the Executive Council of I.M.U. recommends the extension of benefits of revised HRA to the MERI Mess employees, which would include the petitioner and the I.M.U cannot be permitted to take a contrary stand to defeat the legitimate entitlement of the petitioner.

The order passed by the Co-ordinate Bench in *Korban Khan* was sought to be reviewed by

the University but the Court was pleased to direct the University to comply with its earlier order dated 9th April, 2019 by which the Vice-Chancellor of I.M.U was directed to release the leave encashment benefit to the petitioner in terms of the 7th Pay Commission. As submitted by the counsel, I.M.U has complied with the order and has released the leave encashment benefit to the petitioner in W.P. 7209 (W) of 2019. The point of I.M.U not having sufficient funds to extend the benefit of the revised HRA to the petitioner cannot be accepted once the Executive Council of I.M.U has resolved to extend such benefit to the MERI Mess employees which would include the petitioner before this Court.

In view of the above reasons, this Court finds merit in the case made out in the writ petition which is accordingly allowed in terms of prayers (a) and (b). The respondent nos. 4, 5 and 6 are directed to implement the Resolution taken by the Executive Council of the Indian Maritime University on 28th September, 2016 and comply with the direction of the Directorate General of Shipping dated 15th January, 2018 and extend the benefit of the revised HRA under the 7th Central Pay Commission to the petitioner without further delay.

W.P.A No. 18616 of 2021 is disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)