

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 7544 of 2012

Union of India and others

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Petitioner

*Mr. P.K. Parhi, ASGI along with
Mr. P.K. Das, CGC*

Vs.

Sanjit Kumar Patra and others

.....

Opposite parties

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

20.04.2022

Order No.

04.

This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Parhi, ASGI appearing along with Mr. P.K. Das, learned counsel for Union of India-petitioners.

3. The Union of India-petitioners have filed this writ petition challenging the order dated 06.10.2010 passed in O.A. No. 71 of 2010, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack, by holding that there was no distinguished feature to deviate from the view already taken by the Bombay and Cuttack Benches of the Central Administrative Tribunal and, as such, any of the applicants applied for allotment of quarters but subsequently refused to take, in view of the order of Bombay and Cuttack Benches of the Central Administrative Tribunal, quashed the orders impugned to the original application and directed the petitioners to release the withheld HRA of the opposite parties forthwith at any rate within a period of 45 days from the date of receipt of the order.

4. The factual matrix of the case, in brief, is that 26 applicants, who are working under the Aviation Research Centre, Charbatia in different capacities, had approached the tribunal by filing O.A. No. 71 of 2010 challenging the office memorandum dated

29.10.2009 issued by opposite party no.4 withdrawing the house rent allowance which they were getting earlier with effect from January, 2010 onwards on the ground of not occupying the departmental quarters lying vacant for the occupation of the employees of the ARC. The stand of the opposite parties-applicants before the tribunal was that the office memorandum dated 29.10.2009 was issued in complete violation of the principles of natural justice and against the law laid down by the Bombay Bench of the Tribunal, vide order dated 31.12.2007 in O.A. No. 385 of 2007 (*Anjali Vaishnab v. Commissioner of KVS*), and the same is liable to be set aside. The present petitioners who were opposite parties before the tribunal contended that due to paucity of Government accommodation, some employees of ARC, Charbatia were forced to stay outside ARC campus either in their own house or rented house and were allowed to draw HRA. Subsequently, due to large scale retirement, surrender of posts under 10% cut, ban on direct recruitment, transfer of some units to ARC, New Delhi, transfer of posts to ARC headquarters and other outstations, entitlement of higher accommodation due to increase in pay on implementation of ACP scheme etc., a number of government accommodation in certain types have fallen vacant. But some employees who were staying outside ARC campus and drawing HRA prior to falling vacant of Government accommodation in ARC campus have moved and some were continuing outside and drawing HRA. The 17th ITC (Internal Test Check) of Directorate of Accounts Cabinet Secretariat, New Delhi raised observation that different types of Departmental residential quarters were lying vacant whereas officials were permitted to live outside and draw HRA/CILO. It

was also observed that when departmental residential quarters are held in surplus, HRA should not be allowed to officials who do not apply for residential accommodation or refuse to accept accommodation offered/allotted or surrender it after having accepted. Therefore, Director of Accounts, New Delhi, vide letter dated 27.06.2005 addressed to all concerned Heads of Department, i.e., Aviation Research Centre (ARC), Special Protection Group (SPG) and Special Frontier Force (SFF) fixed certain norms and therefore the office memorandum is the outcome of the headquarters letter dated 27.06.2005. Therefore, when enumerated number of quarters are available, the applicants cannot avail HRA without getting the same staying outside the premises of ARC. Thereby, decision was taken not to extend HRA pursuant to office memorandum dated 29.10.2009. Challenging the same, the applicants approached the tribunal and in turn the tribunal, taking into consideration the judgment passed by the Bombay Bench and Cuttack Bench, quashed the office memorandum and directed the petitioners to release the withheld HRA of the opposite parties forthwith at any rate, within a period of 45 days from the date of receipt of the order. Hence this application.

5. Mr. P.K. Parhi, learned ASGI appearing along with Mr. P.K. Das, learned counsel for Union of India-petitioners vehemently contended that when quarters were not available, the applicants were allowed to stay outside, for which they were getting HRA. But due to reasons mentioned above and now that quarters are made available, they should have occupied the same and, as such, they are only entitled to get HRA, in view of the observation made by the Director of Accounts, New Delhi and as

a consequence thereof the office memorandum was issued on 29.10.2009. So far as the reliance placed on the judgment of the Bombay Bench is concerned, the same is not applicable to the opposite parties, as the same is distinguishable one and, therefore, the benefit cannot be extended to the opposite parties pursuant to such judgment.

6. Though the judgment was passed by the tribunal on 06.10.2010, but writ petition was filed challenging such judgment of the Central Administrative Tribunal on 23.04.2012 and, as such, notice was issued to opposite parties in many of the cases and the opposite parties, who are applicants before the tribunal in many of the cases, against them notice was not made sufficient. In any case, we are in the year 2022 and, therefore, without awaiting any reply from the opposite parties, who were applicants in the original application, this Court proceeded to examine the judgment of the tribunal in the context, as has been argued by Mr. Parhi, learned ASGI for the petitioners.

7. The admitted fact being that the applicants, who are the opposite parties in the present application, were the officials of ARC, Charbatia, who were staying outside and drawing house rent allowance. But all on a sudden, pursuant to the office memorandum dated 29.10.2009, direction was given to apply for allotment of Government accommodation within 8 days of receipt of the memo, failing which the house rent allowance drawn by them will be stopped. In response thereto, two officials applied for allotment of entitled quarters and rest others submitted representations with a request for sanction of HRA in the light of the decision of the Bombay Bench of the Central Administrative Tribunal in the case of *Anjali Vaishnab* (Supra). Needless to say

some of the employees were also staying in their own house constructed availing house building advance with permission of the competent authority and repaying the loans on the monthly installment basis. Their cases were forwarded to the ARC headquarter for decision and it was clarified by ARC that the vacant quarters of ARC, Charbatia may be declared as surplus accommodation and invited applications for allotment even on one up basis. In case staff do not apply for allotment and also do not take a 'No accommodation Certificate', the payment of HRA/CILQ to them be discontinued. Since the opposite parties did not apply for Government accommodation within the stipulated period, necessary order was issued for discontinuance of HRA w.e.f. January, 2010. But fact remains, since the opposite parties were staying outside the ARC area at a point of time when the quarters were not made available. Because of the subsequent developments as mentioned above, even if the quarters are available, they are already settled down outside of the ARC area allowing their children to prosecute their studies and some of them constructed their own house by taking house building loans and as a consequence thereof they were availing house rent allowances without any objection by the authority. Merely because, subsequently some quarters fallen vacant, for which the employer cannot compel an employee to occupy the quarters failing which the house rent allowance shall be stopped and, as such, the learned ASGI failed to produce any such provisions of law governing the field nor can the employer compel the employee to stay in the quarters and, as such, no circular or any guideline has been placed before this Court to that extent. As such, an affidavit has been filed in Court today indicating that some of the opposite parties

have retired in the meantime and some of them also died and therefore, question of stoppage of house rent allowances in respect of those persons does not arise. Reliance is placed by the petitioners on the judgment of the Bombay Bench of the tribunal. On close scrutiny of the same, it appears that in the said case one quarter had been allotted to 17 employees within one month and the authorities had stopped HRA of all 17 employees and therefore, the tribunal held that the opposite parties who have adopted policy of denial of house rent allowance on the ground of double loss in the form of expenditure on quarters that itself may not be applicable in the present case. The said judgment is not applicable to the present case, in view of the fact that here quarters are available but the employees are staying outside the area of ARC since when the quarters were not available. Merely because due to subsequent changes in the position quarters are available, the authority cannot direct for stoppage of HRA to the opposite parties, who were applicants in the original application. More so there was lot of changes in the meantime, some of them have retired and some have already died in the meantime, and, therefore, in the event of stoppage of house rent of those employees, irreparable loss will be caused to them. Thereby, such action of the authorities cannot sustain in the eye of law, as nothing has been placed on record to indicate that the employer can compel the employee to stay in the quarters merely because they are lying vacant. As such, the purpose of grant of house rent allowances will be frustrated, in the event the employees are compelled by the employer to occupy vacant quarters.

8. In view of such position, this Court is of the considered view that the order passed by the tribunal is to be modified to the

extent that the employees those who have already occupied the quarters they will not be entitled to the house rent allowances, but the employees those who are remaining outside the ARC area, they shall not be denied such benefit. Needless to say, those employees who have already died in the meantime, if their HRA allowances have been withheld, the same shall be disbursed in their favour without any fail, as expeditiously as possible, preferably within a period of six weeks from the date of production of certified copy of this order.

9. With above observation and direction, the writ petition stands disposed of.

Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Sukanta

