

23.02.2023

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WPA 7803 of 2021

Moumita Sarkar (Samanta)

– Versus –

The State of West Bengal & Others

Mr. N. C. Bihani,

Ms. P. B. Bihani

Mr. S. Ghosh

Mr. Soumya Mukherjee

... For the petitioner.

Mr. Swapan Kumar Datta, AGP,

Mr. Tapas Kr.Mondal

... For the State.

Mr. Biswajit Sarkar,

Mr. Amit Bikram Mahata

... For the Respondent nos.7 & 8.

The petitioner is an Assistant Professor of Commerce at Bangabasi Morning College, Kolkata. Her husband is working in a private organisation.

In terms of Clause 8 of Government Order No. 1306(22) – Edn (U)/EH/1U –77/17 dated December 30, 2019 issued by the Department of Higher Education, University Branch, she was enjoying the house rent allowance. The said Clause 8 provides as follows:-

“Allowances:

- (a) **House Rent allowance** – With effect from the 1st January, 2020, the house rent allowance admissible shall be 12% of his/her revised basic pay, subject to a maximum of Rs. 12,000/- per month. The ceiling of house rent allowance drawn by husband and wife together shall also be raised to Rs. 12,000/- per month.

The term basic pay in the revised pay structure means the pay drawn in the prescribed Pay Level in the Pay Matrix and does not include any other type of pay.

The existing terms and conditions of drawl of house rent allowance by an individual living in his/her own house or in a rented house shall continue to apply.

When a Government accommodation being a habitable condition in all respect with appropriate supply of water, power and toilet arrangements for individual families and such a Government accommodation is earmarked for holder of a particular post, the holder will not be entitled to house rent allowance for living elsewhere.”

Subsequently, the Department of Higher Education issued a Memorandum No.644-Edn (CS)/3A-04/2019 dated November 11, 2020 which provides, *inter alia*, as follows: -

“The undersigned is directed by order of the Governor to say, that in conformity with the Finance Department’s Memo No. 8012-F(P2) dt 27.12.2018, read with Memo No. 5839-F(P) dt. 09.07.2012, the matter of granting HRA to an employee of a Sponsored/Aided Educational Institution, whose spouse is working in a private organisation, where HRA is allowed as a separate element, the HRA of the spouse shall be taken into account, as done in the case, where spouse is the employee of any Government of semi-Government organisation.

All concerned are being informed accordingly.”

Following the said order dated November 11, 2020, the State started deducting the petitioner's house rent allowance from January 2020, since her husband, who is an employee of a private organisation also received house rent allowance from his employer.

The said order of November 11, 2020 was based on a corrigendum being Memo No. 8012-F (P₂)/FA/O/2M/206/17 (N.B.) dt. 27.12.2018, issued by the Finance Department of the State.

In this writ petition, the petitioner has, *inter alia*, challenged the said order dated November 11, 2020.

It is not disputed by the parties before this Court that the corrigendum dated December 27, 2018 has already been quashed by a coordinate Bench of this Court by a judgment dated March 16, 2021, passed in **WPA 1389 of 2018 (*Mousumi Biswas and another vs. State of West Bengal and others*)**.

Relevant operative parts of the said judgment are quoted below: -

“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 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.”

An appeal being **MAT 1023 of 2021 (State of West Bengal & Ors. vs. Mita Majumdar & Ors.)** has been preferred by the State against the order of the single Bench passed in **Mousumi Biswas** (supra), no stay order has been passed yet.

Thereafter, another learned Single Judge of this Court in **WPA 10009 of 2022** after taking into consideration the order passed in **Mousumi Biswas** (supra) and the pendency of the appeal, granted similar benefits to the petitioners. The relevant operative part of the said order dated July 18, 2022, is quoted below:

“In that view of the matter, this Court directs the State to first release HRA benefits to the petitioners 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 petitioners, 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.”

I have no reason to differ with the reasoning of the judgment delivered in **Mousumi Biswas** (supra).

I am of the view that the impugned Government Order No. 644-Edn.(CS)/3A-04/2019 dated November 11, 2020, cannot be sustained as it is also based on the corrigendum dated December 27, 2018 issued by the Finance Department of the State which has been quashed in **Mousumi Biswas** case.

The petitioner in this case is, therefore, entitled to the house rent allowance in terms of Government Order No. 1306(22) – Edn (U)/EH/1U –77/17 dated December 30, 2019.

I am, however, of the view that if the State is directed to refund the amount already recovered from the petitioner at this stage the same may amount to giving a final relief to the petitioner before disposal of the pending appeal (MAT 1023 of 2021).

In that view of the matter this writ petition is disposed of by directing the respondents not to further recover any amount on account of the house rent allowance from the petitioner till the disposal of MAT 1023 of 2021. The petitioner will be entitled to receive the house rent allowance in terms of Clause 8

of the Government Order dated December 30, 2019 as quoted above in this judgment.

The aforesaid directions shall abide by the final decision that may be rendered in MAT 1023 of 2021.

With the aforesaid observations, WPA 7803 of 2021 is disposed of.

There will be no order as to costs.

Urgent certified *website* copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)