

20.09.2023
Item No.25
gd/ssd

WPA 6502 OF 2020
CAN 1 of 2020 (Old No.CAN 5193 of 2020)
SMT. BITHI MAULIK
VS
THE STATE OF WEST BENGAL & ORS.

Mr. Shakti Pada Jana,
Mr. Atanu Basu,
Mr. Subhojyoti Das
..for the Petitioner.

Mr. Biswabrata Basu Mallick,
Ms. Mrinalini Majumdar
..for the State.

The petitioner has challenged the action of the respondent authorities in withholding the House Rent Allowance of the petitioner with effect from September, 2018.

The petitioner is an Assistant Teacher of a School. The petitioner was getting House Rent Allowance. Such allowance was paid to the petitioner till the month of August, 2018.

It is the case of the petitioner that the authorities have stopped paying House Rent Allowance to the petitioner with effect from the month of September, 2018. The husband of the petitioner who is employed in a private organization is also receiving House Rent Allowance from his employer.

Mr. Jana, learned advocate appearing for the petitioner submits that the issue as to whether a State Government employee can be deprived of the benefits of the House Rent Allowance on the ground that his/her spouse is also receiving House Rent Allowance from a private organization has been decided by a Coordinate Bench on 16.03.2021 in a batch of writ petitions, the lead case being WPA 1389 of 2018 in the case of *Mousumi Biswas & Another v. State of West Bengal & Others*.

Learned advocate representing the State submits that the State of West Bengal has preferred an appeal being MAT 1023 of 2021 challenging the aforesaid judgment and order dated 16.03.2021 which has been re-numbered as FMA 654 of 2022. She submits that since the appeal is pending, the hearing of the writ petition should be adjourned till the Hon'ble Division Bench decides the appeal.

Heard the learned advocates for the parties and perused the materials placed.

The learned advocate for the State, in her usual fairness, submits that the operation of the order passed by the Coordinate Bench in the case of *Mousumi Biswas & Another (supra)* has not been stayed by the Hon'ble Division Bench.

It is well settled that mere pendency of an appeal does not operate as a stay of operation of the

order under challenge in an appeal. The judgment and order passed by the Coordinate Bench in the case of *Mousumi Biswas & Another (supra)* is binding upon this court.

The Coordinate Bench summarized its findings in paragraph 48 of the said decision which is extracted hereinafter:

“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.”

After arriving at the aforesaid findings, the Coordinate Bench directed the State respondents to ensure complete conformity in the payment of House Rent Allowance. The Coordinate Bench further

directed that the arrears of House Rent Allowance shall be paid to the petitioner within a stipulated time.

The aforesaid directions of the Coordinate Bench in paragraphs 49 and 50 are set out hereunder:

“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.

50. Needless to state, the above direction shall also be applicable in cases where the State Respondents had proceeded to recover the purported excess HRA that was paid to the petitioners with the direction that such recovered amount of purported excess HRA may also be repaid to the petitioners.”

It is not in dispute that no amount has been recovered from the petitioner on the ground of excess payment of HRA.

This court, therefore, directs the District Inspector of Schools (Secondary Education), District-North 24-Parganas to pay the arrears of House Rent Allowance to the petitioner with effect from

September, 2018 till date within a period of six weeks from the date of receipt of the requisition from the school authority.

The concerned school authority is directed to make necessary requisitions in terms of this order within a period of two weeks from the date of receipt of the server copy of this order.

It is, however, made clear that any payment made in terms of this order shall be subject to the result of the pending appeal.

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

There will not order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)