

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 15489 of 2019

Reserved on : 19.05.2023
Pronounced on: 11.07.2023

Shanti Chakraborty

...Petitioner

-Vs-

State of West Bengal & Ors.

...Respondent

Present:-

Ms. Debjani Sengupta,
Ms. Koyel Bag,
Ms. Shahina Haque,
Mr. Abhijit Chatterjee, Advocates

... for the Petitioner

Ms. Chaitali Bhattacharya,
Mr. Kartik Chandra Kapas, Advocates

....for the State

Rajarshi Bharadwaj, J:

1. The instant writ application has been preferred challenging, inter alia, a letter dated November 16, 2017 vide Memo No. 68-ES/audit/12A-47/17, Corrigendum No. 8012-F dated December 27, 2018 issued by Finance Department of West Bengal herein respondent No.2 and direction given by District Inspector of Schools (S.E), Paschim Bardhaman herein respondent No.5 by which one Shanti Chakraborty herein the writ petitioner's claim for

withdrawal of full House Rent Allowance (hereinafter referred to as HRA) was refused.

2. The facts of the case are that the petitioner was initially appointed to the post of assistant teacher in Bijoygram Girl's Jr. High School, Burdwan on August 25, 2010. Subsequent thereto, she was transferred to Panagarh Bazar High School on July 1, 2015. Post joining to the stated posts; the writ petitioner had been drawing a salary as mandated in the scale of pay. Such salary with permissible components also included inter alia, the specific component of HRA payable as per the Revision of Pay and Allowance Rules (ROPA), subject to pertinent Government Orders/Circulars issued in consonance with ROPA Rules from time to time.

3. The petitioner got married to one Mr. Sandip Banerjee on May 3, 2015 and from the very next day of her marriage started residing at her matrimonial house at Banerjee Para, Near-Salanpur Free Primary School, Village and post-Salanpur, Paschim Bardhaman, Pin 713214. Starting November 2015, the spouse of petitioner has been working in Tata Steel and for his job location resides at Jajpur, Odisha. The spouse of the petitioner drew an amount of Rs.6500/- towards HRA. All such particulars had been supplied by the petitioner to Headmaster, Panagarh High School herein respondent No. 7 in pursuance of para 10 of Memo No. 97-SE (B) dated March 7, 2001.

4. Paragraph 10 of the erstwhile ROPA Memorandum of 1998, circulated by Memo No. 25-SE(B) dated February 12, 1999 previously pegged a ceiling of HRA to be drawn by both husband and wife at Rs.2000/- per month. However, a clarificatory memorandum bearing No. 97- SE(B)/1M-24/2001 dated March 7, 2001 in furtherance to paragraph 10 of the erstwhile ROPA Memorandum of 1998 wherein the memorandum categorically specified the following aspect vis-à-vis the HRA payable and the ceiling applicable to working spouses jointly as:

"...In case where both the husband and the wife are Teachers/Non-teaching Employees or one of them is a Teacher/Non-teaching Employee

of a Non-Govt./Sponsored Educational Institutions including Libraries and employees of a District Primary School Council, and other spouse is an employee of the State Govt./Central Govt./Public Undertakings/Local Bodies etc., the HRA @ 15% of Basic Pay may be allowed not exceeding of Rs. 2000/- p.m. on the basis of declaration to be given by them to the effect that the H.R.A. taken by both of them together from their offices does not exceed Rs.2,000/- p.m...”

5. The extant provision of ROPA Memorandum, 2009, that is, paragraph 13 specific to the component of HRA payable to the teaching and non-teaching staff of Government sponsored or aided schools up to Class- XII standard and applicable in this case of the writ petitioner, was circulated by a memo bearing No. 46-SE(B)/5B-1/2009 dated February 27, 2009 and is stated as follows:

“13. House Rent Allowances:

With effect from the 1st April,2009 the House Rent Allowance admissible to an employee shall be 15% of his revised basic pay i.e. aggregate of the band pay plus Grade Pay and additional increments, if any, in the revised pay structure subject to a maximum of Rs.6000/- per month. The ceiling of House Rent Allowance drawn by husband and wife together shall also be raised to Rs. 6000/- per month. The existing terms and conditions of drawl of House Rent Allowance by employees living in their own house or in a rental house shall continue to apply. Subject to continuance of the existing terms and conditions regulating drawl of House Rent Allowance by the employees provided with accommodation owned/hired by the Authority and recovery of fixed rent/license fee from time, the following conditions shall be there with effect from 1stApril, 2009 in respect of such categories of employees.

1) When an official accommodation being in habitable condition in all respect and such accommodation is earmarked for holder of a particular post without any rent, the holder will not be entitled to House Rent Allowance for living elsewhere.

2) In case the employee pays rent or license fee for such official Government accommodation, his reimbursement in the form of House Rent Allowance will be limited to actual license fee/rent paid or 15% of the pay whichever is lower.”

6. So as to restrict drawl of HRA within limit of Rs.6000/- to all teachers and other employees of all the schools by submitting false declarations, Memo No. 68-ES/Audit/12A-47/17 dated November 16, 2003 directed respondent No.5 to verify the admissibility of HRA to all teachers and other employees of schools and to collect salary slip/certificate of spouse working in government, public sector undertakings and private sector.

7. On discovering in April 2018 that an insufficient sum of Rs.1000/- was drawn towards HRA taking into account HRA drawn by the petitioner's spouse from private employer, an application on the basis of Memo No. 955-SE dated July 27, 2011 was made requesting resuming HRA on distance ground .As per para 2 of Memo No. 955-SE (Law)/SL/5S-1221/09 in case the distance is less than 150 K.M but not less than 50 K.M, and the said distance is not commutable daily by availing general transport, full HRA as per rule with approval of the Department may be admissible to both working spouses if they live separately. Subsequent thereto, by Corrigendum No. 8012-F dated December 27, 2018 issued by the respondent no.2, clarifying the applicability of Memo No. 5839-F(P) dated 9th July, 2012 for employees of sponsored/aided Educational Institutions whose spouse is working in a private organization. Petitioner's claim towards HRA was refused.

8. On account of ill health of the petitioner's aged parents, the petitioner has to take care of her parents and has to visit her parent's residence at A1/35 B.O.G.L Township, P.O Amarabati Durgapur. The writ petitioner suffered part deduction in H.R.A on the ground that her spouse is getting HRA more than the common ceiling from private organisation till 2018 and the entire HRA was stopped since July 2019.

9. Thus, being aggrieved with the curtailment of HRA from the salary package of the petitioner and the directions given by the respondent No.5, the petitioner moved the present petition before this Hon'ble Court.

10. It has been submitted by the learned counsel for the petitioner that the respondent authorities have acted illegally and irrationally by not allowing the withdrawal of HRA to the petitioner since August 2018 and that such rejection is beyond the ambit and scope of ROPA Rules, 2009.

11. The petitioner after marriage was staying at her matrimonial house. However, due to the transfer of her husband in Odisha that is 500 K.M.s away from the place of her residence it was unfeasible to stay together. Thus, based on the Memo No.955-SE dated 2011 the petitioner is eligible to receive full HRA as her husband stays much beyond the 250 K.M.s ceiling prescribed in the Memorandum. In the backdrop of such fact there is no restriction upon the petitioner to avail full HRA in terms of para 13 of the memorandum dated February 27, 2009.

12. The said policy of the State Government to grant common HRA with upper limit as of April 1, 2009 is 15% of the revised basic pay subject to a maximum of Rs.6000 per month. In case where both the husband and the wife are working in either sponsored schools or State Government undertakings/ Central Government undertakings/ Local Bodies etc. the ceiling limit together shall not exceed the said amount. However, all other existing terms and conditions were still continuing to apply. Therefore, the clarification notice dated IM-5/2003 shall also stand valid which states that the petitioner whose husband is an employee of a purely private organisation where government does not contribute any financial assistance will be eligible to draw HRA.

13. The petitioner at present resides at her parental home in order to take care of them. The father of the petitioner was an employee of Bharat Ophthalmic Glass Limited and was superannuated on 31st January, 2007. The company however has gone under liquidation and the same is still

pending before this Hon'ble High Court. All the employees including the petitioner's father apart from the provident fund did not get their service dues or retirement dues or gratuity. Owing to this the petitioner's father has been living in the vacant quarters and taking care of the maintenance expenses himself, as there has been no official order from the Court regarding the resolution of outstanding payment or the need to move out of the quarters.

14. Additionally, it has been submitted that since 27th December 2018, the original Memorandum dated 9th July 2012, which covered spouses of employees working in private organizations sponsored by non-government institutions, did not apply. Therefore, the alleged Audit query holds no relevance, and Memo No. 68 dated 16th November 2017, which was issued in response to the Audit query, lacks substantial significance and should be invalidated.

15. The learned counsel for respondent no. 5 submitted that it is well settled principle of law that HRA is not a matter of right, it is a compensatory allowance given by an employer to an employee towards the rental accommodation expenses of the employee when Government is unable to provide residential accommodation suitable for the residence of its employee. The HRA would be covered by the definition of Compensatory Allowance. It is compensation in lieu of accommodations. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. The moment, therefore, the amenities are produced or offered or available, the employee should cease to be in receipt of the compensation which is given for want of it. Thus it appears that HRA is a statutory right, and can be subjected to restrictions which are reasonable. Further, the school education department issued administrative orders from time to time. Notification dated 31st July, 1984 and the notification dated 15.01.2003 relates to the clarification/illustration in respect of providing HRA to an employee working in an Educational Institution whose spouse is working in private organization order dated 31st July, 1984 is in consonance with ROPA 1999 and ROPA 2009

but the order dated 15th January, 2003 is contrary to ROPA 2009. Therefore, after coming into effect of ROPA 2009, the provision laid down in Office Administrative order dated 15.01.2003 is in contravention of the policy the State made in ROPA 2009 and thus will no more be in existence.

16. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the principle of common ceiling is not applicable and payment of full HRA cannot be disallowed to the petitioner on the ground that her spouse is drawing HRA from a private Organisation. The logic behind the fixation of ceiling of HRA is based on the assumption that the husband and wife shall share the common roof while discharging the duties in their respective working place. The provision for ceiling of House Rent Allowance has been mentioned in order to restrict a married couple from drawing House Rent Allowance twice in respect of the same accommodation wherein the said married couple under normal circumstances is supposed to reside for attending their respective place of employment. However, the aforesaid ceiling limit cannot be made applicable where the married employed couple are compelled to reside separately in two separate residential accommodation like in the present case where the distance between the matrimonial home of the writ petitioner at Paschim Bardhaman and the occupational address of her spouse at Jaipur is more than 500 K.M making it unfeasible to commute daily by availing general transport. In the case of **Latika Sahu -vs- The State of West Bengal & Others, reported in 2013 (1) CHN 623**, the Calcutta High Court held that the Rules relating to House Rent Allowance should be given an appropriate and reasonable meaning. The ceiling of House Rent Allowance in respect of husband and wife together can be made applicable when the husband and wife are able to share a common roof for the purpose of attending their respective working places and not otherwise. If it is established that the husband and wife are compelled to maintain two separate residential accommodations in order to report to their respective place of

employment, question of imposition of the ceiling of House Rent Allowance cannot be made applicable either on the husband or on the wife.

17. The petitioner is deprived of her right to draw HRA on account of apparent error or mistake in the Certificate issued by Durgapur Municipal Corporation wherein the address of the parental home instead of the matrimonial home of the petitioner is listed. Though the error in the certificate as well as the fact that the petitioner residing at her matrimonial home is a frequent visitor to her parental home is well known to respondent No.7, the certificate was relied upon while preparing the salary slips of the writ petitioner. There has been prima facie defect on part of the respondent authorities in refusing the writ petitioner's claim for HRA on the ground that her spouse was employed in the public sector enterprise. The respondent authorities have failed to recognize that the petitioner's father was employed in the public sector enterprise while her spouse works in the private sector. No effort was made to rectify the mistake in spite of repeated prayers by the petitioner. Hence, the curtailment of HRA of the writ petitioner is on improper and arbitrary grounds.

18. The blatant disregard of the impugned memorandum 955-SE(Law)/SL/5S-1221/09 dated July 27, 2011 does not reveal any independent application of mind on the part of the concerned respondent and the petitioner's claim has been rejected by a cryptic order without considering the scope and ambit of para 13 of the memorandum dated February 27, 2009. A policy regarding drawl of HRA should be uniformly exercised in the field of employment.

19. For the reasons discussed above, the writ application is allowed and the respondents are directed to release full House Rent Allowances of her revised basic salary in favour of the petitioner along with all arrears.

20. With the above observations and directions, the writ application is disposed of. There shall, however, be no order as to costs.

21. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(RAJARSHI BHARADWAJ, J)

Kolkata

11.07.2023

PA (BS)