

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4204 OF 2021

- 1] Husharsing S/o Shankarsing Sable
- 2] Dr. Ashok Sakharam Kadam
- 3] Dr. Santosh Dhondopant Khamitkar
- 4] Mr. Sanjay Singh Gajraj Singh Thakur
- 5] Dr. Sachin Manohar Narangale
- 6] Mr. Ganesh Hari Pawar

.. Petitioners

Versus

- 1] The State of Maharashtra
Through Principal Secretary
Higher and Technical Education
Department, Madam Kama Road,
Hutatma Rajguru Chowk, Mantralaya,
Mumbai – 32
- 2] The Secretary Finance Department
State of Maharashtra,
Mantralaya, Mumbai – 32.
- 3] The Director of Higher Education,
Maharashtra State, Pune,
Tal. and Dist. Pune
- 4] Divisional Joint Director,
Higher Education, Nanded
- 5] The Union of India
Through University Grants Commission
Bahadur Shah Jafar Marg, New Delhi
- 6] Swami Ramanand Teerth Marathwada
University, Nanded
Through its Registrar
Tal. and Dist. Nanded

.. Respondents

...
Advocate for petitioners : Mr. P.R. Katneshwarkar
AGP for the respondent – State : Mr. P.K. Lakhotiya
Advocate for the respondent no. 5 : Mr. B.B. Kulkarni
Advocate for respondent no. 6 : Mr. Uday Malte
...

**CORAM : MANGESH S. PATIL &
S.G. CHAPALGAONKAR, JJ.**

**RESERVED ON : 14 JUNE 2023
PRONOUNCED ON : 05 JULY 2023**

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. Learned AGP Mr. P.K. Lakhotiya waives service for respondents no. 1 to 4. Mr. B.B. Kulkarni waives service for respondent no. 5 and Mr. Uday Malte waives service for respondent no. 6.

3. At the joint request, the matter is heard finally at the stage of admission.

4. The petitioners who are the employees of the respondent no. 6 - University and residing in the vicinity of Nanded city are claiming House Rent Allowance (HRA) as is applicable to the employees residing within the Nanded city limits.

5. Mr. Katneshwarkar for the petitioners would submit that the petitioners have been in the employment since 1994. They were being paid HRA as per the prescribed rules which were prevalent and applicable to the employees residing in Nanded city till the year 2016,

as per the Government decision dated 20-09-1984. However, by a subsequent resolution dated 11-12-1988, decision was taken to pay HRA with revised rate prescribed by resorting to the classification of cities as 'A-1', 'A', 'B-1', 'B-2', 'C' and Non-Classified. The Nanded city was classified as category 'C'.

6. He would point out that the State government took a decision on 15-02-1999 and accepted the policy adopted by the Central government to use census for the purpose of classification of the cities for payment of HRA. He would point out that the Central government issued a circular on 27-11-1965 in respect of payment of Compensatory City Allowance and HRA to the government servants whose place of duty is in the proximity of a classified city but because of the necessity they have to reside within the city. Since the Government of Maharashtra has accepted categorization of the cities on the lines of the Central government GR dated 05-02-1990, the petitioners were being paid the HRA at the rates determined by the Central government. Since the State government has not framed separate rules for payment of HRA and since the petitioners were being paid HRA by following the Central government norms by resorting to the criterion of adjoining area, when the respondent no. 6 - University situate barely within a distance of 2 Kms of the Nanded Waghala Municipal Corporation limits the petitioners ought to have

been continued to be paid HRA as was being done at the rate that was applicable to the employees residing in Nanded city.

7. Mr. Katneshwarkar would submit that the respondent - State government brought the revised policy for payment of HRA vide GR dated 16-12-2016. The cities were classified as 'X', 'Y' and 'Z' to whom the HRA was payable at the rate of 30%, 20% and 10%, respectively. Nanded Waghala Municipal Corporation was classified in category 'Y' and the employees serving within the limits of that Corporation are entitled to HRA at the rate of 20%. He would submit that the petitioners who were being paid HRA for years together at a rate which was applicable to the employees residing in Nanded city, this resolution adversely affects the service conditions and puts them to a disadvantageous position. The petitioners are entitled to get HRA @ 20%. Their representations to the State government have not been considered and they be declared as entitled to receive HRA @ 20% as is applicable to the employees residing in the Nanded city with effect from 16-12-2016.

8. Per contra, the learned AGP would vehemently submit that admittedly the petitioners have been residing beyond the limits of Nanded Waghala Municipal Corporation which has been classified in category 'Y' by the Government resolution dated 16-12-2016 and for this reason alone they would not be entitled to claim HRA as is

applicable to the employees residing within the limits of that Corporation. Therefore, there is no error in issuing the impugned communication dated 01-04-2018 which merely endorses and follows the Government decision. He would submit that the petitioners were being paid HRA @ 10% even prior to the Government resolution dated 16-12-2016.

9. He would submit that the Central government had classified the towns and villages for the purpose of HRA to its employees on 29-08-2008. In tune with that even the State government classified the cities and the villages vide G.R. dated 24-08-2009. Subsequently, on the basis of the census of 2011, the Central government has re-classified the cities and villages which list was published on 21-07-2015. It is in tune with the classification made by the Central government that the State government also issued Government resolution dated 16-12-2016 and the government employees residing in the Nanded Waghala Municipal Corporation which has been classified as 'Y' category are being paid HRA @ 20%. Since the location of the respondent no. 6 - University which is the place of duty for the petitioners situate beyond the Nanded Waghala Municipal Corporation limits, they cannot be treated as residents of Nanded city who could be paid HRA @ 20%. He would further submit that as per the civil service rules, the HRA will have to be determined with reference to the place of duty and not the actual place of

residence. The place of residence of the petitioners, therefore, falls in 'Z' category and they are entitled to HRA @ 10%.

10. We have carefully considered the rival submissions and perused the papers.

11. There is not much of a dispute about the fact that the petitioners have been in the employment of the respondent no. 6 since the year 1994 and they were being paid HRA in accordance with the regulations of the Central government which were adopted by the State government from time to time. There is also no dispute about the fact that their place of duty is beyond the limits of Nanded Waghala Municipal Corporation. There is no dispute about any discrimination as far as the classification is concerned. The issue is, as to if the petitioners can claim and are entitled to get HRA, as is applicable to the Nanded Waghala city Municipal Corporation limits even while their place of duty is beyond that limits.

12. The whole emphasis of the petitioners has been on the fact that if they were being paid the HRA at a rate which was applicable to the Nanded Waghala Municipal Corporation limits i.e. 10%, till the Government resolution was passed on 16-12-2016, whether they could be put to a disadvantageous position after coming into effect of that resolution.

13. The logic of the learned advocate Mr. Katneshwarkar for the petitioners that since the petitioners have been paid HRA at a rate that is admissible to the State government servants and were being so paid till the year 2016, the resolution dated 16-12-2016, puts them to a disadvantageous position, is fallacious. There is no dispute that being the employees of the respondent no. 6 - University, the petitioners are entitled to HRA at the same rate as is applicable to the State government employees as is mentioned even in the GR dated 05-02-1990. The question is, as to if without there being any challenge to the categorization / classification of the cities and towns resorted to by the State government, can the petitioners be given any benefit beyond such classification when they admittedly their place of duty is beyond the Nanded Waghala Municipal Corporation limits. It is not a matter of any concession as such. If the classification is based on a rationale which is not put to challenge, whether the petitioners can be extended the benefit beyond what has been prescribed by law? In our considered view, the answer has to be emphatic 'No'.

14. Perhaps, contemplating such a situation, an attempt was made by Mr. Katneshwarkar to place reliance on the fact that since for all this while the State government has been following the decision of the Central government for payment of HRA and when the Central government vide circular dated 27-11-1965 has issued a memorandum which admits of specific class of employees of municipal corporation

limits, the petitioners' place of duty being barely within the distance of 2 Kms from the Nanded Waghala Municipal Corporation city limits would be entitled to the same HRA by treating their place of residence as the one falling within the city.

15. Even if it is a matter of record that the State government has been, in consonance with the decisions of the Central government taken from time to time, has granted similar benefits to its employees as far as payment of HRA by resorting to classification, still, it is difficult to cross the statutory limits. If the place of duty of the petitioners, may be on account of they are being in duty of respondent no. 6 - university which situate beyond the limits of the classification made by the State government, in our considered view, this is not a case of any discrimination; rather in the absence of any specific decision by the State government to pay HRA to the employees of the respondent no. 6 - university at any specific rate over and above what is applicable to the rest of the State government employees, this Court in exercise of the writ jurisdiction cannot extend that benefit.

16. It appears from the communication made by the respondent no. 6 - university to the State government on 28-11-2018 and 07-12-2020, an attempt was made to draw parallel with the rate of HRA which is being received by the employees of some of the universities in the State and even outside the State of Maharashtra.

We are afraid, this line of stand being taken by the respondent no. 6, may be at the instance of the petitioners and similarly situated persons, does not appeal to reason or logic. Once it is appreciated that the entitlement to HRA would depend upon place of duty unless there is any challenge to the classification of the cities and towns, this stand cannot be accepted.

17. Even an attempt has been made by Mr. Katneshwarkar to demonstrate that once the State government has accepted to resort to census for resorting to classification, respondent no. 6 - university having been located in the vicinity of the Nanded Waghala Municipal Corporation would fall in the urban agglomeration, is beyond the scope of the petition and, therefore, per view of the Court. Besides, in our considered view, so long as it cannot be demonstrated that this concept of the urban agglomeration can form the basis for determining the entitlement of the petitioners to claim HRA and any decision by the government to that effect, this line of argument will not be sustainable.

18. There is no merit in the writ petition. It is dismissed.

19. Rule is discharged.

[S.G. CHAPALGAONKAR]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE