

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

919 WRIT PETITION NO.1873 OF 2007

Shivraya s/o. Shivanand Mathapati,
Age : 33 years, Occu : Service,
R/o. Nelwad, Tq. Nilanga,
District Latur.

.. PETITIONER

VERSUS

1] The State of Maharashtra
Through the Additional Commissioner,
Aurangabad.

2] The Chief Executive Officer,
Zilla Parishad, Latur,
Dist. Latur.

.. RESPONDENTS

WITH

919 WRIT PETITION NO.1874 OF 2007

Smt. Jyoti d/o. Prabhu Ardale,
Age : 32 years, Occu : Service,
R/o. Nelwad, Tq. Nilanga,
District Latur.

.. PETITIONER

VERSUS

1] The State of Maharashtra
Through the Additional Commissioner,
Aurangabad.

2] The Chief Executive Officer,
Zilla Parishad, Latur,
Dist. Latur.

.. RESPONDENTS

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Mr.Sayyed Tauseef Yaseen, Advocate for the petitioners in both petitions.

Mr.G.O.Wattamwar, AGP for the respondent – State in both petitions.

Mr.S.S.Manale, Advocate for the respondent no.2

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CORAM : ARUN R. PEDNEKER, J.

DATE : 02.02.2023

P.C. :

1] Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2] Both the Writ Petitions involve common questions and are taken up together.

3] The petitioners are challenging the judgment and order dated 23.02.2007 passed by the Additional Commissioner, Aurangabad and the order dated 31.05.2005 passed by the Chief Executive Officer, Zilla Parishad, Latur.

4] The petitioners were appointed as Assistant Teachers in the Zilla Parishad School in the year 1995 and 1997 respectively. The Assistant Teachers are the husband and wife. The relevant facts for consideration of the present

Writ Petitions are that the Assistant teachers were entitled to receive individually the House Rent Allowance on being appointed as Assistant Teachers. On 31.01.2001, the State of Maharashtra issued a Government Resolution bringing about a change in policy of HRA received by Government employees staying together i.e. if one or more Government employees are residing together, then only one of them would be entitled to receive the House Rent Allowance.

5] The Government Resolution dated 31.01.2001 also provided for an undertaking to be given in the format. Undertaking was required to be given to the effect that if more than one Government employees in the family are residing together then only one person in the family is receiving the house rent allowance. The said Government Resolution came into force from 01.02.2001.

6] On 24.03.2003, the Education Officer [Primary] issued show-cause notices to the petitioners, husband and wife, in which the charges were against the petitioners that both the petitioners are receiving house rent allowance

individually in contravention of the Government Resolution dated 31.01.2001.

7] In response to the said show cause notices, the petitioners filed their replies accepting that they have individually received the house rent allowance.

8] Thereafter, after following due process, the petitioners were held liable for the charges and awarded the punishment of stoppage of two increments permanently and recovery of entire house rent allowance amount by order dated 31.05.2005 and the said order was confirmed by the Appellate Authority.

9] It is the contention of the petitioners that as per the Government Resolution dated 22.06.2001 and 09.09.2004, all the Government employees residing together are entitled to receive individually the house rent allowance and the arrears of the said house rent allowance are also given to the employees, who have not received the same. This fact is not disputed by the respondent – Zilla

Parishad. It is further the contention of the petitioners that the petitioners had no knowledge about the Government Resolution dated 31.01.2001. As per the Government Resolution dated 31.01.2001, the petitioners have never filed undertakings before the concerned Department. Due to lack of knowledge, the petitioners have received the amount of house rent allowance. It is further contention of the petitioners that thereafter the said Government Resolution has been stayed by the High Court and the Government has also withdrawn its policy of paying HRA to only one the family members and has paid the house rent allowances to the Government employees whose HRA was not paid as per Government Resolution dated 31.01.2001 along with arrears. Therefore, the learned counsel for the petitioners submit that the impugned order deserves to be quashed and set aside.

10] The learned counsel for the respondent no.2 – Zilla Parishad submits that in view of the fact that there was an admission of the charge by the petitioners, the Zilla

Parishad has not produced any further material at the stage of enquiry and there is possibility that the petitioners may have also filed undertakings as per the Government Resolution dated 31.01.2001.

11] The learned counsel for the respondents submits that although the petitioners would be entitled for the house rent allowances, but looking at the petitioners' conduct that they have not brought to the notice of the authorities that both, husband and wife, are receiving house rent allowances and the said conduct has to be appropriately punished.

12] I have perused the impugned order passed by the Chief Executive Officer and the Additional Commissioner. While passing the impugned orders, the authorities below have not taken into consideration the fact that within five months the Government has issued another Government Resolution dated 22.06.2001 and as per the said Government Resolution, the Government has recalled its policy of paying HRA to only one of the family members

staying together and also paid the house rent allowances to the Government employees i.e. husband and wife, along with arrears.

13] Since the authorities have not taken into consideration that there was a long standing policy to give house rent allowances to both the employees i.e. husband and wife staying together and later on, the Government has introduced a change to policy by the Government Resolution dated 31.01.2001 that if one or more Government employees are staying together, then only one of them would be entitled to receive the House Rent Allowance, there is possibility that the petitioners had no knowledge about the Government Resolution dated 31.01.2001 as the same was withdrawn within short time by another Government Resolution dated 22.06.2001. This aspect is not considered by the authorities below.

14] Both the impugned orders proceeds on the basis that the petitioners have wrongfully obtained the HRA benefit contrary to the Government policy. The State

Government immediately within five months, withdrew the earlier Government Resolution dated 31.01.2001 and even paid arrears to the Government employees and as such there was no unlawful amount received by the petitioners towards the HRA.

15] In view of the same, both the Writ Petitions are allowed. The impugned orders dated 23.02.2007 passed by the Additional Commissioner, Aurangabad and the orders dated 31.05.2005 passed by the Chief Executive Officer, Zilla Parishad, Latur are quashed and set aside.

16] Accordingly, the Writ Petitions are allowed.

[ARUN R. PEDNEKER]
JUDGE

DDC