

HONOURABLE SRI JUSTICE E.V.VENUGOPAL

WRIT PETITION No.2332 of 2020

ORDER:

1 Challenge in this writ petition is to the inaction of the respondents in considering and granting House Rent Allowance to the petitioner from 01.04.2017 till 31.03.2019.

2 The case of the petitioner is that the petitioner was transferred from Jamnagar, Gujarat. On 10.02.2017 the petitioner addressed the respondents for confirmation of availability of married accommodation by duly intimating the date of arrival and joining of duty in order to mobilize the household articles by the end of March, 2017. However, there was no response from the respondents though accommodation was available from 01.12.2016. On 03.04.2017 the petitioner joined in Secunderabad and requested for Type-III married accommodation. On 24.04.2017 the petitioner intimated to the respondents about the arrival of his family from the old station. Since there was no response, the petitioner took private accommodation. It is further submitted that on 05.05.2017 the respondents intimated about allotment of Government married accommodation, whereas the petitioner had already hired a private accommodation. The petitioner further submits that he addressed a detailed letter on 30.07.2018 and 03.10.2018 indicating all the correspondence for payment of HRA due to failure of the respondents for allotment of

married accommodation to the petitioner in the month of April, 2017, which forced him to hire private accommodation. Petitioner further submits that he purchased a house on 19.11.2018. Since no favourable action was forthcoming, petitioner got issued a legal notice to the respondents on 19.11.2019. But no reply was given nor any amounts were paid. Hence the petitioner filed the present writ petition seeking the intervention of this Court to direct the respondents to pay HRA to him from 01.04.2017 till 31.03.2019.

3 The respondents filed counter affidavit stating that as per Clause 5(1) and (2) of SRO 308, dealing with allotment of residences (Defence Pool Accommodation for civilians in Defence Services) Rules, 1978, all officers posted at a station where accommodation has been built specially for civilians in Defence Services, who are eligible for the allotment of such accommodation, shall apply for allotment on joining duty at the station. Whereas Clause 5 (3) of SRO 308 stipulates that the application for allotment of married accommodation received on or before the last date of calendar month will be considered in the succeeding month. Since the petitioner made application on 03.04.2017 i.e. on the date of his joining, the application was forwarded to allotting authority. The Estate Management Unit, vide letter dated 26.04.2017 had allotted Qtr.No.22B, Gopal Colony, Mudfort, Secunderabad to the petitioner i.e. within 23

days of submission of his application and that the petitioner was informed about the allotment. It is submitted that the petitioner visited the quarter personally but did not occupy the same. Therefore, the petitioner is not entitled to claim HRA as per Para (b)(i) & (ii) of the letter No.F2 (37) E-II B/64 dated 27.11.1965 of the Government of India, Ministry of Finance, Department of Expenditure which says that allowance shall not be admissible to those to whom accommodation has been offered by Government but who have refused it. It is further submitted that the petitioner submitted his application on his arrival on reporting the office on 03.04.2017. As per rule position, the petitioner's case for allotment should have been considered subsequent to 30.04.2017. But the petitioner was allotted accommodation on 26.04.2017, which is well within one month of his reporting to the station and the letter was also handed over to him through the section in which he was working. But the petitioner, without occupying the quarter, claimed HRA by residing in a private accommodation.

4 It is further submitted that the references to the Office Order of the Ministry of Defence letter dated 31.07.2018 that the two working days given against Sl.No.6 is not for allotment of accommodation but for forwarding the application for allotment of accommodation to the competent authority.

5 Sri Ponnamm Ahok Goud, the learned counsel for the petitioner submitted that the petitioner has informed the respondent authorities well in advance about his arrival and requirement of married accommodation. But the respondent authorities have not allotted him married accommodation and hence the petitioner was forced to take a private accommodation. He further submitted that even after protracted correspondence for allotment of Government accommodation, the respondents failed to release the HRA to the petitioner along with monthly salary in April, 2017. He further submitted that the respondents have intimated about the allotment of Government accommodation to the petitioner on 05.05.2017, but by then the petitioner has already occupied a private residence on arrival of his family members and household articles. He further submitted that though the petitioner had submitted all documents relating to purchase of a own house, and though the petitioner is entitled to the HRA, the respondents have denied the same to the petitioner.

6 On the other hand, Mr.Karuna Sagar, learned counsel representing Sri Gade Praveen, the learned Deputy Solicitor General of India, submitted that though the petitioner was informed about the allotment of married accommodation, he did not occupy it, instead claimed HRA, which is not permissible as per the rules in vogue. He further submitted that though the

request of the petitioner was processed in the same month of his submission of letter, he did not accept the same and hence he is not entitled to HRA.

7 The undisputed facts as culled out of the record are that the petitioner was transferred from Jamnagar, Gujarat. On 10.02.2017 the petitioner addressed the respondents for confirmation of availability of married accommodation by duly intimating the date of arrival and joining of duty in order to mobilize the household articles by the end of March, 2017. On 03.04.2017 the petitioner joined in Secunderabad and requested for Type-III married accommodation. On 24.04.2017 the petitioner intimated to the respondents about the arrival of his family from the old station. Since there was no response, the petitioner took private accommodation. On 05.05.2017 the respondents intimated about allotment of Government married accommodation, whereas the petitioner had already hired a private accommodation. Petitioner purchased a house on 19.11.2018.

8 As seen from **Allotment of Residences (Defence Pool Accommodation for Civilians in Defence Services) Rules, 1978**, wherein Rule No.5 deals with Application for allotment Rule 5 (2) says that *“An officer joining duty at the station of first appointment or on transfer may submit his application to the Allotting Authority within a month of his joining duty”*. Rule 5 (3)

says that *Applications received under sub-rule (2) on or before the 20th day of a calendar month shall alone be considered for allotment in the succeeding month.*

9 Applying the above rule to the case on hand, it is no doubt the petitioner made application on 03.04.2017 i.e. on the date of his joining the present station. However, the authorities have forwarded his application to the allotting authority and the allotting authority in its meeting held on 11.04.2017 has allotted married accommodation to the petitioner and communicated the same to the petitioner on 26.04.2017 itself though as per Rule 5 (3) extracted above the allotment can be made after April, 2017. The contention of the petitioner that as per Office Order (Ministry of Defence) dated 31.07.2018, the maximum number of days for allotment of Government accommodation is two days is not correct, it is the time fixed for disposal / forwarding of application for allotment / possession of Government accommodation.

10 Further, the Office Memorandum dated 27.11.1965 issued by the Government of India, Ministry of Finance (Department of Expenditure) says that under Rule 4 (b) (ii), in case of refusal of allotment of Government accommodation, house rent allowance shall cease to be admissible from the date of allotment of Government accommodation. Rule 7 (i) thereof says that a Government servant living in a house owned by him, his wife,

children, father or mother shall also be eligible for house rent allowance.

11 As seen from the above, this Court is of the view that married accommodation which the petitioner had sought for was made available to the petitioner in the same month of his application.

12 It is pertinent to note that as per Rule 8 (2) (iv) of the Rules, in case of transfer to another military station, the residence allotted to an officer can be retained by him for two months. So the petitioner is obviously entitled to retain the accommodation in which he was residing in his previous station i.e. Jamnagar for a period of two months after his transfer to the new station. Though the petitioner has such facility to retain the accommodation for two more months in his previous station, he rushed to the new station and without waiting for the decision to be taken by the allotment authority has taken a private accommodation. The petitioner being the officer of the same Department must have knowledge about the procedure being following in allotting the accommodation. Ignorance of fact may be excused but ignorance of law cannot be excused. Therefore, the petitioner cannot attribute any *mala fides* to the respondent authorities that they intentionally delayed for allotment of accommodation thereby forcing him to take a private accommodation.

13 The contention of the petitioner that the authorities have not even given any intimation regarding non-availability of married accommodation cannot be countenanced because it is not the case of the respondents that there was no married accommodation available as on that date for being allotted to the petitioner. Reiterating at the cost of repetition, the petitioner's application was considered with a period of ten days and he was allotted a married accommodation within ten days thereafter. Therefore, as there was no abnormal or inordinate delay on the part of the respondents in processing the application of the petitioner for allotting married accommodation, the petitioner is not entitled to seek a direction to the respondents to pay HRA to him from the date of his joining in the new station.

14 As seen from the record, the petitioner purchased own house in the year 2018 and accordingly he intimated the same to the authorities by his letter dated 19.11.2018. In view of Rule 7 (i) a Government servant living in a house owned by him, his wife, children, father or mother shall also be eligible for house rent allowance.

15 Taking the totality of the circumstances into consideration, this Court is of the opinion that the petitioner is not entitled to HRA from April, 2017 till November, 2018, but he is entitled to HRA from December, 2018 till date as per his entitlement. The

respondents are directed to process the bills forthwith and pay the same to the petitioner.

16 Accordingly, the writ petition is partly allowed. No order as to costs. Miscellaneous petitions if any pending in this writ petition shall stand closed.

E.V.VENUGOPAL, J.

Date: 13.02.2023
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