

WPA 2211 of 2022

5.2.2024

Ct.35,sl.17
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Mousumi Mukherjee-vs-State of West Bengal & Ors..

Mr. Syed Shamsul Arefin
...for the petitioner.

Mr. Avishek Prasad
...for the State respondents.

Mr. Arefin appears for the writ petitioner whereas Mr. Prasad is representing the respondents in this writ petition.

The grievance of the writ petitioner is with regard to the order of the Headmaster, Memari V.M. Institution, Unit-II, dated 19.7.2021. By dint of the said order, the concerned authority has declined to pay house rent allowance to the writ petitioner who is a teacher in the said School.

The factual background of the case in a nutshell is that the petitioner being the teacher of the said School as mentioned above, is said to be entitled under the applicable rules for house rent allowance. However, her husband who is working in a private organization is also entitled to house rent allowance as per the rules governing his service.

The petitioner's claim for the house rent allowance is based on the fact that her husband though being a family member of her, is not an employee under the Government and is not bound by the same rule. Accordingly, in term of the rules, the writ petitioner says

that, she would be entitled to the house rent allowance, irrespective of the fact of her husband receiving any house rent allowance or not, under the specific service conditions of the private concern in which he is employed.

Mr. Arefin appearing on behalf of the petitioner has placed reliance on the judgment of a Coordinate Bench of this Court in WPA 2211 of 2022. He says that the said judgment would be binding as regards the facts and circumstances of the present case also. The petitioner would be entitled to the benefit as prayed for.

Mr. Prasad has relied on another judgment of the Coordinate Bench in WPA No. 9040 of 2023 dated 16.5.2023. According to Mr. Prasad, the self-same issue, as it is involved in the present writ petition, is now pending for adjudication before the Hon'ble Division Bench of this Court in MAT 1023 of 2021. However, there is no order of stay as regards the order of the Hon'ble Single Bench, which was assailed before the Division Bench in the said appeal.

Considering the respective submissions of the parties, it is found that, firstly, the writ petitioner is a School Teacher governed by the rules of the State respondents. In accordance with the same, she shall be entitled to the house rent allowance as the solitary government employee of the family. Fact remains that

her husband is also entitled to house rent allowance being an employee of a private concern, in terms of rules of that company.

The said fact, would not, however, bear any relevance regarding applicability of the appropriate rules to a government servant i.e. the writ petitioner. A person's statutory rights shall not be amenable to curtailment, without following due process of law.

Accordingly, this writ petition is disposed of with the direction that the writ petitioner shall continue receiving the benefit of house rent allowance in terms of the applicable rules including the arrears of the same, if any.

Let such arrears, if any, be paid within a period of six weeks from the date of this order.

Since the similar issue is pending for adjudication before the Hon'ble Division Bench in MAT 1023 of 2021, the decision of this court as mentioned above, though shall be implemented at present, shall finally abide by the result of the said appeal.

With the directions as above, this writ petition is disposed of.

Urgent photostat certified copy of this order duly downloaded from the official website of this court upon compliance all legal formalities.

(Rai Chattopadhyay, J.)

