

Court No. 22

15.01.2024

(Item No. 59)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 4248 of 2018

Aradhana Mukherjee

VS

The State of West Bengal & Ors.

Ms. Debjani Sengupta

Ms. Koyel Bag

Mr. Abhjit Chatterjee

Ms. Shahina Haque

..... for the petitioner

Mr. Shamim Ul Bari

Ms. Rajyashree Mukherjee

.... For the State

This is a hearing matter.

Affidavit of service filed in Court today is taken
on record.

Despite there being a direction dated July 16,
2018 no affidavit-in-opposition has been filed.

Since the issue is already covered in favour of
the petitioner by virtue of precedence of this Court,
this Court thinks it fit that, no fruitful purpose will be
served by keeping this writ petition pending for
affidavit. Hence, this Court proceeds for final disposal
of the instant writ petition.

Pursuant to the leave granted by this Court
today, a supplementary affidavit affirmed on
25.09.2023 is filed today and the same is taken on
record. Copy has already been served upon Mr.
Shamim-Ul-Bari, learned counsel for the State.

Ms. Rajyashree Mukherjee, learned advocate led by Mr. Shamim-Ul-Bari, learned advocate appeared for the State respondent nos. 1 to 5.

One individual petitioner filed this writ petition. She claimed to be **Assistant Teacher** under the State. The subject matter of challenge is **Memo No.5839-F(P) dated July 9, 2012** issued by the **Finance Department, Government of West Bengal.**

House Rent Allowance (for short the HRA) paid to the Assistant Teachers under the State is normally linked to the HRA paid to their spouses who are also employed with the State authority. The object is to ensure that double benefit of HRA is not availed by the couple staying under the same roof.

The impugned memoranda, however, were sought to be applied even to those Assistant Teachers whose spouses are employed in the Non-State private organization.

As a consequence whereof, such persons like the petitioners are either denied HRA or allowed the same only to a limited extent up to a ceiling level. The issue was considered in great detail before a Co-ordinate bench in a series of writ petitions. On the same issue the coordinate Bench delivered its judgment and order **dated March 16, 2021 in WPA 1389 of 2018, In the matter of: Mousumi Biswas and Another vs. State of West Bengal and Others.**

The relevant observation from the said judgment, *Mousumi Biswas (supra)* is quoted below :

“48. Therefore, to summarize the key takeaways of the findings of the Court, the same is stated as follows:

a) The Audit Memo dated November 16, 2017 and Memo No. 2554/GSE dated December 28, 2017 are held to have been issued without authority of law and is set aside on the rounds of being issued on irrelevant considerations and being manifestly arbitrary/discriminatory, in effect 3effect as per the law laid down in Subhasis Negel (supra).

b) Pertaining to the States access to limited pool of resources which necessitated this purported rejig of policy in the first place, such argument stands self demolished for the reason that employees of State aided colleges and universities are getting the full benefits of drawal of HRA, notwithstanding that their spouses might be engaged in private employment. With a lack of a certain legitimate objective being met by the State, this therefore, becomes a clear case of unreasonable classification and hence is violative of the tenets of equality enshrined under Article 14 of the Constitution of India.

c) Notwithstanding the unreasonable classification which was carried out in the case of the petitioners which is patently violative of Article 14 of the Constitution of India, no technical or expert findings or relevant factors had been furnished by the State Respondents to justify the need for the alleged modification of such policy concerning the drawal of HRA, by the petitioners. There is no demonstration as to the extent of fiscal prudence sought to be achieved by

the State by purportedly bringing into consideration the HRA of the spouses (engaged in private employment) of those employees who are serving in non Government/ Aided/Sponsored educational institutions, to trigger the common ceiling under the ROPA Memorandum of 2009 and thereby specifying the quantum of funds saved, by the public exchequer. Therefore, such an irregular policy decision merits an interference of this Court as per the principles laid down in Subhasis Negel (supra) and Federation of Railway Officers Association (supra).

d) The impugned, clarificatory Corrigendum dated December 27, 2018 read with the Finance Department Memo No. 5839-F(P) dated July 9, 2012 is applicable in the matters of grant of HRA to a state government employee, who are governed by the altogether separate West Bengal Service (ROPA) Rules, 2009 issued vide Memo No. 1691-F dated February 23, 2009 and for the selfsame reason, it is inapplicable to the category of employees employed in nongovernment sponsored institutions, who are governed by the ROPA Memorandum of 2009 for NonGovernmental Educational Institutions, issued by Memo. 46-SE(B) dated February 27, 2009.

e) The impugned, clarificatory corrigendum dated December 27, 2018 (which was issued post the initiation of the present litigation) in so far as it is inconsistent by including within its ambit employees who are serving in non-Government /Aided/Sponsored educational institutions is liable to be struck down for being violative of the Finance Department Memo No. 5839- F(P) dated July 9, 2012. The impugned, clarificatory corrigendum could not have risen above its source

and is accordingly set aside to such degree of inconsistency as aforesaid.

49. In view thereof, the State Respondents are hereby directed to ensure complete conformity in the payment of HRA which is payable to the petitioners in accordance with the ceiling envisaged in the ROPA Memorandum of 2009 which is applicable to them along with any connected memos, that maybe applicable. If in any case, the payment of such HRA has been stopped in pursuance of the Audit Memo dated November 16, 2017, Finance Department Memo No. 5839- F(P) dated July 9, 2012, and Memo No. 2554/G-SE dated December 28, 2017 or other similar memos that have been issued by the various District Inspectors of Schools (S.E) across the State of West Bengal, the arrears of the same must be paid to the petitioners within six weeks from the date of this judgment.”

Learned counsel for the State submitted that, an appeal was carried out from the said judgment of the coordinate Bench and the same is still pending. The operation of the judgment dated March 16, 2021 had not been stayed by the Hon’ble Appellate Court. Thus, the said judgment is still in force and holds the field.

On a reading of the said judgment of the coordinate Bench ***In the matter of : Mousumi Biswas (supra)***, this Court is also in respectful agreement with the same.

Referring to a document dated **August 12, 2022** at **page 27** to the supplementary affidavit

affirmed on **September 25, 2023**, Ms. Debjani Sengupta, learned counsel for the petitioner submitted that, following the dictum ***In the matter of :Mousumi Biswas (supra)*** the State authority had already carried out the direction. In support of her contention learned counsel for the petitioner had also relied upon a communication of the State dated **August 3, 2022** at **page 25** to the said supplementary affidavit. In that view of the matter, this Court directs the State to first release HRA benefits to the petitioner in terms of the applicable rules (excluding the impugned Memos), together with complete arrears till date. Any recoveries already made, shall be refunded to the petitioner, within a period of six weeks from date. Any order of recovery still pending, shall remain automatically stayed.

The petitioner shall continue to receive HRA as if the impugned Memos are not in force.

Needless to mention, the aforesaid order shall abide by the final result of **MAT No. 1023 of 2021**.

For the purpose of complying with the aforesaid order, both the School authorities shall forthwith send appropriate requisition/bills and/or calculations to the D.I. of Schools, who shall release payment, within the time stipulated hereinabove.

With the aforesaid observations, the writ petition, **WPA 4248 of 2018** is **disposed of**.

There shall be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Aniruddha Roy, J.)