

S/L 5
30.4.2024
Court No.18
SD

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

WPA 8067 of 2023

Bibha Sarkar

Vs.

The State of West Bengal & Ors.

Mr. Ekramul Bari

... for the Petitioner.

Mr. Arindam Chattopadhyay

Ms. Lipika Chatterjee

... for the State.

The petitioner is an Assistant Teacher at Hooghly Girls' High School, District Hooghly. The husband of the petitioner since is an employee of a private company, as such the concerned authority, applying the Memo bearing No.5839-F(P) dated July 09, 2012 issued by the Finance Department, Government of West Bengal, has stopped the House Rent Allowance (HRA) of the petitioner since August, 2022.

The petitioner is challenging the applicability of the said Memo in respect of her entitlement to get HRA.

The Finance Department, Government of West Bengal has issued the aforementioned Memorandum dated July 09, 2012 to clarify that when the spouse, being an employee of a private organization gets HRA as a separate element, such HRA shall be taken into account while calculating the admissible HRA of a State government employee.

The Finance Department, Government of West Bengal by a Corrigendum Memo thereto bearing no. 8012-F(P2)/FA/O/2m/206/17(N.B.) dated December 27, 2018, sought to bring the employees of different type of organizations including the employees of sponsored/aided educational institutions within the sweep of the said Memo dated July 09, 2012.

A Co-ordinate Bench of this Court by that judgment dated March 16, 2021 passed in WPA 1389 of 2018 (*Mousumi Biswas & Ors. vs. State of West Bengal & Ors.*) has struck down the aforesaid Memos dated July 09, 2012 and December 27, 2018.

The relevant paragraph of the said judgment is quoted below:-

“...48 ..

(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...”

This Court by an order dated April 10, 2024 passed in WPA 27461 of 2022 (***Dr. Sahadev Bandyopadhyay vs. The State of West Bengal & ors.***) has concurred with the view expressed by the said Co-ordinate Bench and has held that the aforesaid Memo dated July 09, 2012 is applicable to the State Government employees but by a Corrigendum Memo thereto (dated December 27, 2018), the employees of the non-Government/Aided/Sponsored educational institutions cannot be brought within the sweep of the said original Memo.

The concerned authority/authorities are therefore directed to release the full HRA of the petitioner with immediate effect, the arrear thereof, if there be any, be paid to the petitioner along with interest thereon @ 6% per annum from the date on which it became payable till the date of actual payment. The arrear HRA is to be paid within a period of eight weeks from the date of communication of this order.

WPA 8067 of 2023 is allowed with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)