

S/L 3
05.4.2024
Court No.11
SD

WPA 7032 of 2008
With
CAN 2 of 2023

Smt. Sonali Ganguly (Mukherjee)
Vs.
State of West Bengal & Ors.

Mr. Ekramul Bari
Sk. Imtiaj Uddin

...for the Petitioner.

Mr. Arindam Chattopadhyay
Ms. Lipika Chatterjee

...for the State.

This writ petition was preferred primarily to question the propriety of the order dated January 17, 2008 issued by the District Inspector of Schools in terms of the order dated 11.9.2007 passed in WP 1983 (W) of 2007 and also to seek a writ of mandamus directing the respondents to release the House Rent Allowance (In short, HRA) in favour of the petitioner.

The dispute that revolves around the writ petition originated in the purported action taken by the school in withholding the petitioner's HRA since July, 2003. During pendency of this proceeding, the petitioner has superannuated on 31.12.2023 but no retirement benefits including the pension have been extended in favour of the petitioner on the plea that petitioner whose husband was in Government service had overdrawn HRA from July, 2003 to June, 2006 in excess of maximum limit of Rs. 2000/- p.m. Situated thus, the petitioner by preferring an application

being CAN 02 of 2003 has prayed for an further direction for release of her retirements benefits.

Before going to delve deep into the dispute, it would be apt to advert to the facts which needs to be adumbrated for effective adjudication of the writ petition. The petitioner joined the Ban-Ashuria High School (H.S.)(in short, the school) as Assistant Teacher in Economics on November 28, 1988 and her appointment was duly approved.

The petitioner's husband being an executive officer of the Revenue Department, Government of West Bengal was in transferable job and as such, during his stint on being transferred from one station to another he had to stay in different parts of the State. Eventually, in June, 2003, both the working spouse settled in their self-owned house located at Durgapur, Burdwan.

Suddenly, with her utter surprise the petitioner found that the school authority had withheld the petitioner's HRA since July, 2003. Aggrieved thereby, the petitioner approached this Hon'ble Court with a writ petition being WP 1983 (W) of 2007, which was disposed of by an order dated 11.9.2007 directing the District Inspector of Schools to consider the petitioner's grievance and take a reasoned decision. Pursuant thereto, the District Inspector of Schools *vide*. his order dated January 17, 2008 negated the petitioner's claim contending that the petitioner had drawn HRA in excess of her entitlement. Hence, the writ petition.

Mr. Bari, learned advocate for the petitioner argues that the petitioner had all along submitted the statements

detailing the data relating to the withdrawal of House Rent Allowances by herself and her husband but the school authority basing upon a gross miscalculation and misinterpretation of the rules in vogue withheld her HRA. According to him, the D.I. of Schools also without deciding the issue in proper perspective has erroneously endorsed his approval to the purported action of withholding of HRA. Going a step further, the District Inspector of Schools has directed deduction of so-called excess amount from the petitioner's retirement benefits which, in his view, is an arbitrary action from the end of the D.I. of Schools.

Tweaking some provisions from a memo. *vide.* no. 955-SE(Law) dated July 27, 2011 issued by the School Education Department, Government of West Bengal, he contends that neither the school authority nor the D.I. of Schools did consider the components incorporated in the above-referred memorandum which were required to be taken in account while calculating the HRA of the working spouse.

He claims that the petitioner and her husband had to live separately for a considerable length of time. That apart, the petitioner for having her accommodation at such distance from the school which was not commutable daily and as such, the petitioner was forced to stay in rented accommodation near the school but despite being apprised of such facts, the school authority withheld her HRA and the D.I. of Schools has by his order sanctified such illegal act of the school authority. He asserts that if such components are

taken into consideration, then there shall be no over drawl. It is urged by him that a direction be given upon the respondents to release her retirement benefits along with HRA for the period commencing from July, 2003 to June, 2006.

Mr. Chattopadhyay, learned advocate appearing for the State vehemently opposes such contention canvassed by Mr. Bari. He submits that the notification dated July 27, 2011 cannot be given retrospective effect. He argues that all the proceedings for recovery of the excess payment of HRA was initiated much prior to the date of her retirement. He contends that following the rules governing the field, the District Inspector of Schools has rendered a reasoned decision leaving no scope to interfere with the same.

Heard learned advocates for the respective parties and perused the materials on record.

In terms of the rules prevalent at the material point of time, where both the husband and wife are working spouse , they were entitled to draw HRA from their respective places of job but up to the maximum limit of Rs.2,000/- per month.

From the record it would be explicit since June, 2003, the petitioner and her husband started to live at their self-owned house located at Durgapur. The comparative chart prepared by the school authority (Annexure-R/1 to CAN 2 of 2023) postulates that from July, 2003 to June, 2006 both the working spouse drew HRA but in excess of the permissible limit of Rs.2000/- p.m. Since there is no express provision of retrospective operation of the memorandum

dated 27.7.2011, the petitioner cannot claim its benefits retrospectively. Indisputably, neither the school authority nor the D.I. of schools had any scope to consider the components like 'separate living', distance in between the school premises and house of a teacher etc. It is also noteworthy that process of recovery of excess payment of HRA was started much prior to the date of retirement of the petitioner.

Consequently, from the foregoing analysis, the only analogy which can be drawn is that the D.I. of Schools has not misdirected itself in negating the petitioner's claim and also in directing the school authority to realize the HRA drawn by the petitioner in excess of her entitlement. Hence, I do not find any justification to interfere with the order of the D.I. of Schools dated 17.01.2008.

However, upon taking note of the subsequent event being the superannuation of the petitioner, the Director of Pension and Provident Fund and Group Insurance, West Bengal is directed to release all sorts of retirement benefits of the petitioner after making adjustments of the HRA, as quantified to have been overdrawn by the petitioner for the period commencing from July, 2003 to June, 2006. To ensure early release of the petitioner's retirement benefits, the District Inspector of Schools shall complete all the actions as required to be taken from his end and forward the petitioner's pension-related documents within four weeks from the date of receipt of a copy of this order to the Director of Pension and Provident Fund and Group Insurance, West

Bengal who on receipt of a communication from the District Inspector of Schools along with the requisite documents shall disburse the pension and other retiral benefits in favour of the petitioner within a period of four weeks thereafter.

With these observations and order, the writ petitioner and its connected application are, thus, disposed of.

There shall be no order as to costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)