

22.01.2024
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Item no.16
Ct. 238

WPA 12005 of 2023

Dr. Swagata Ray
Vs.
The State of West Bengal & Ors.

Mr. N.C. Bihani
Mr. Soumya Mukherjee
... For the petitioner.

The State is not represented at the time of call.

The petitioner is an Associate Professor of Botany
at Jogmaya Devi College, Kolkata.

It is the grievance of the petitioner that the State
has deducted the House Rent Allowance from her salary
from the month of May, 2020 on ground that her
husband, an Assistant Professor at Indian Institute of
Management (IIM), Ranchi, an autonomous institution
under the Ministry of Human Resources Development,
Government of India, is residing at Ranchi, Jharkhand
and drawing house rent allowance from his
organization.

It is the grievance of the petitioner that the
petitioner and her husband are located approximately
421 kilometers apart. It has been submitted by the
learned advocate for the petitioner that since they are
living separately, there cannot be any justification to
deduct the house rent allowance from the salary of the
petitioner.

In support of his case, learned advocate appearing for the petitioner has relied upon a judgment passed by a Co-ordinate Bench of this Court in **WPA 21525 (W) of 2014 (Dr. Paromita Majumdar vs. The State of West Bengal & Ors.)**

The said judgment has dealt with a situation where the petitioner therein was employed in an aided educational institution at Kolkata and her husband was employed under the Central Government at New Delhi.

In such a factual scenario, the Court directed the State to release the house rent allowance in favour of the petitioner. The relevant parts of the said judgment are quoted below:

“The undisputed facts are that the petitioner is engaged in an approved educational institution and is residing at Kolkata. The petitioner’s husband is employed under the Central Government and he is residing at New Delhi. Both the places of residence are separated by a distance of more than 1300 kms. The petitioner’s claimed towards full HRA was considered and recommended by the Governing Body of the said college. The judgment delivered in the case of Latika Sahu (Supra) has already been complied with and the appellant therein has been disbursed the benefits and the State Government did not choose to prefer any appeal against the same.

A perusal of the judgment delivered in the case of Latika Sahu (supra) reveals that the facts involved in the said matter are identical to the facts of the instant case. In the said matter also the claim of the

petitioner/appellant was not granted in view of the provisions of para 11 of the Finance Department memorandum dated 23rd February, 2009. In the said judgment the Court considered a principle question as to whether different provisions have been made in the concerned Revision of Pay & Allowance Rules for an employee who lives with his/her spouse in same house with those where the spouse lives in separate accommodation. The said question was answered by observing that the ceiling limit of Rs. 6,000/- as specified in para 11 of the memorandum dated 23rd February, 2009 cannot be made applicable where the married employed couple are compelled to reside separately in two separate residential accommodation.

A close perusal of the said Rules of 1926 would reveal that the same does not govern the cases where the husband and wife are residing in separate residential accommodation. Furthermore, there is no reference to the said Rules of 1926 in the finance department memoranda dated 30th November, 2008 and 23rd February, 2009. The memorandum dated 24th October, 2007 pertains to School Education Department and the same has no manner of application in the facts of the instant case. The primary issue involved in this matter is as to whether the petitioner is entitled to get full HRA irrespective of the fact that her husband is drawing HRA from his employer. The said issue has already been answered through the judgment delivered in the case of Latika Sahu (supra) and the Hon'ble Appeal Court had arrived at a definite finding to the effect that the ceiling of HRA can

only be imposed when both the husband and wife will be in a position to share a common roof for the purpose of attending their respective places of employment. The argument of Mr. Datta and the circulars relied upon by him do not persuade this Court to take any different view.

It is well settled that a Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum and that as such the judgment delivered by the Hon'ble Appeal Court is binding upon this Court."

No different view is called for in the present case also.

I dispose of this writ petition with a direction upon the State to release the house rent allowance of the petitioner as per her entitlement within a period of one month from the date of communication of this order.

The amount deducted towards the house rent allowance of the petitioner by the State shall be refunded with 7% interest per annum.

Accordingly, **WPA 12005 of 2023** is disposed of.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Kausik Chanda, J.)