

**HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 19153 of 2024

Dr. Anita Saw
Vs.
The State of West Bengal & Ors.

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

For the State : Mr. Swapan Kr. Dutta
Mr. Dipankar Das Gupta

Heard on : 11.12.2024

Judgment on : 11.12.2024

JAY SENGUPTA, J:

This is an application praying for House Rent Allowance along with arrears and consequential benefits.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was appointed as an Assistant Professor in the respondent no. 7 on July 27, 2017. By an order passed on a Co-ordinate Bench of this Court in WP 17501 (W) of 2009 on March 30, 2010 this Court observed that the State was required to revisit the memorandum dated October 24, 2007 which mandated that both the husband and the wife

would be allowed full House Rent Allowance, subject to certain conditions, if the respective working stations were more than 250 kilometers apart, in view of the fact that if certain incumbents resided apart for a distance of 250 kilometers or slightly less, the object of bringing into force the aforementioned Memorandum would be frustrated. It would not be possible for a spouse to travel such distances on a daily basis, just to stay under one roof. Thereafter the State revisited the issue vide Memorandum dated July 27, 2011 of the School Education Department and it was, *inter alia*, decided that if the distance is less than 150 kilometers but more than 50 kilometers and the said distance is not communicable by availing general available transport, full HRA as per rule with the approval of the Department may be admissible to both working spouses if they live separately. Subsequently, a Division Bench of this Court in MAT 621 of 2012 held that the employee concerned would be entitled to House Rent Allowance as admissible under the relevant rules in view of the fact that the incumbent was compelled to arrange a separate accommodation for herself as it was not possible for her to attend her place of employment after sharing a common roof with her husband. This view was repeated in a case of higher education by a Single Bench of this Court in WP No. 21525 (W) of 2014. A similar view was taken by a Co-ordinate Bench in WPA 14024 of 2023 in a case pertaining to higher education. In the present case, the spouses live at two different places which are about 1877 kilometers apart. Therefore, the petitioner should be entitled to the same benefit as granted by this Court earlier in similar cases.

Learned senior counsel appearing on behalf of the State opposes the prayer and submits that no such notification has been issued by the Higher Education Department. Particular facts of the cases relied upon by the petitioner are distinctly different from the present case. Little difference in facts could change the applicability of a ratio drastically.

I have heard the learned counsels for the parties and perused the writ petition and the affidavits and the written notes of submissions.

It is quite strange that while the School Education Department has taken a particular view in allowing HRA for spouses living apart for a particular distance, the Higher Education Department has chosen not to do so. This issue should have also been revisited by the Higher Education Department at an appropriate stage.

From the cases relied upon by the petitioner, it appears that even in case of Higher Education matters, the Courts have consistently held that when spouses are living too far apart which is not communicable daily by taking recourse to regular means of convenience, then HRA should be paid to both this spouses.

There is no material difference specifically pointed out by the State touching upon the ratio that would distinguish the present case.

On facts, I find no reason to take a different view.

In view of the above, the writ petition is disposed of by directing the respondent authorities to pay House Rent Allowance to the petitioner with necessary arrears and consequential benefits.

Urgent photostat certified copy of this judgment may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J)

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