

10.04.2024
Item No.144,ML
Court No.18
AJ.

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION**

W.P.A. 27461 of 2022

**Dr. Sahadev Bandyopadhyay
-Vs-
The State of West Bengal & Ors.**

Ms. Jhuma Chakraborty,
Mr. R.K. Sahu.
.....for the petitioner.
Mr. Gourav Das.
.....for the State.

Exception to the report of the District Inspector of Schools (S.E.), Kolkata, the respondent no.6 herein is filed on behalf of the petitioner, let it be kept with the record.

The petitioner was the Headmaster of Sailendra Sircar Vidyalaya, Kolkata. On attaining the age of superannuation, he has retired from his said service on November 30, 2021.

The petitioner, while in service, was denied full House Rent Allowance('HRA' in short) on and from July, 2017 till his retirement on the ground that the HRA which his wife is receiving, being an employee of a private company, is adjustable against the amount of HRA to which the petitioner is entitled to.

The petitioner by a representation dated August 22, 2022 to the respondent no. 6 demanded release of the full HRA.

The petitioner, complaining inaction on the part of the respondent no. 6 to dispose of the said representation, had filed a writ petition being W.P.A. 20690 of 2022.

A Co-ordinate Bench of this Court, by the order dated September 23, 2022 had disposed of the said writ petition by directing the respondent no. 6 to consider the said representation after giving the petitioner an opportunity of hearing.

In pursuance thereof, the said respondent by the impugned Memo bearing No. 572/RO/Law dated November 30, 2022 has rejected the prayer of the petitioner holding *inter alia*, that in terms of the Memorandum bearing No. 8012-F(P₂)/FA/O/2m/206/17(N.B.) dated December 27, 2018 the HRA receivable by the wife of the petitioner as an employee of a private company would be taken into account in calculating the HRA of the petitioner.

Perused the report of the respondent no. 6 and the exception thereto filed by the petitioner.

The Government of West Bengal, Finance Department (Audit Branch) had issued the Memorandum bearing No. 5839-F(P) dated July 09, 2012 to clarify that in granting HRA to a State Government employee whose spouse is working in a private organization where HRA is allowed as a separate element, the HRA of the spouse shall be taken into account. The relevant excerpts of the said Memorandum are quoted below for ready reference:-

“Now, with a view to removing the confusion persisting in the matter, the undersigned is directed by order of the Governor to say that Governor is pleased to clarify that as the spirit of the existing provision of the rules goes into the matter of granting HRA to a State government employee whose spouse is working in a private organization where HRA is allowed as a separate element, the HRA of the spouse shall be taken into account as done in the case where

spouse is the employee of any Government or Semi-Government organization.”

The aforementioned Government order dated December 27, 2018 is a corrigendum to the said Memorandum dated July 09, 2012 to bring the employees of different other type of organizations including the employees of sponsored/aided educational Institutions within the sweep of it. The relevant excerpts of the said Corrigendum Memo are reproduced below:-

“ ... as the spirit of the existing provision of the rules goes into the matter of granting HRA to an employee of State Government/ a sponsored/ aided Educational Institution/ Board/ Corporation/ Statutory Body/ Autonomous body and other agencies or other instrumentalities of the State which is/are wholly or substantially owned and/or controlled by the Government whose spouse is working in a private organization where HRA is allowed as a separate element, the HRA of the spouse shall be taken into account as done in the case where spouse is the employee of any Government or Semi-Government organization.”

The legality and propriety of inclusion of the employees of sponsored/ aided Educational Institutions in the aforementioned Corrigendum Memo dated December 27, 2018 was under challenge in W.P.A. 1389 of 2018[***Mousumi Biswas & Ors. vs. State of West Bengal & ors.***] and 25 other writ petitions.

The learned Single Judge of this Court by a common judgment and order dated March 16, 2021, sustaining the said challenge, had disposed of the said writ petitions with the following observation:-

“...48...e) The impugned, clarificatory corrigendum dated December 27, 2018(which was issued post the initiation of the present litigation) insofar 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 09, 2012. The impugned, clarificatory corrigendum could not have risen above its source and is accordingly set aside to such degree of inconsistency as aforesaid...”

The said Corrigendum Memo dated December 27, 2018 since has been struck down, refusal to the prayer of the petitioner for release of the arrear of the balance of his entitled full HRA is not sustainable, the pendency of an appeal (MAT 1023 of 2021[*The State of West Bengal & Ors. vs. Mita Majumder & Ors.*] against the judgment and order of the learned Single Judge in the absence of a specific order of stay cannot also come in the way of the said entitlement of the petitioner

The order impugned, therefore, is set aside. The respondent no. 6 is directed to disburse the arrear HRA of the petitioner with interest thereon @6% p.a. from the date on which it was payable till the date of actual payment within a period of six weeks from the date of communication of this order.

WPA 27461 of 2022 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.)