

19.12.2024

**Sl. No. 09
Ct. No. 23
Srimanta**

WPA/27983/2023

Tapas Kumar Kundu

-Vs.-

The State of West Bengal & Ors.

Mr. Taraprasad Halder,
Mr. Ambu Bindu Chakraborty
... for the petitioner.

Mr. Malay Singh,
Ms. Neelam Singh
...for the State.

Further arguments from the stage as it stood on 9th December, 2024 when the matter was last heard have been advanced and concluded by the parties.

After hearing the parties and considering the materials-on-record, I find that the judgment of a Coordinate Bench dated 16th March, 2021 passed in 26 writ petitions, the first of which is WPA/1389/2018 (Mousumi Biswas & Anr. –Vs.- State of West Bengal & Ors.) reported in 2021 SCC(Online) Cal 524) still holds the field. In one of the writ petitions being WPA/2004/2018 (Mita Majumder & Ors. –Vs.- State of West Bengal & Ors.) the State has preferred an appeal which has been numbered as MAT/1023/2021 along with an application being CAN/1/2022. The appeal has been admitted and has been directed to appear under the heading 'For Hearing' by an order dated 25th July, 2023. The application being

CAN/1/2022 has been disposed of by staying the realization of excess amount, if any, paid to the employee concerned. There is as such no stay of operation of the judgment and order dated 16th March, 2021. The view expressed by the Coordinate Bench in Mousumi Biswas (supra) has been accepted by several other Coordinate Benches, one of which is in WPA/4248/2018 (Aradhana Mukherjee –Vs.- State of West Bengal & Ors.). By an order dated 15th January, 2024 passed in the said writ petition it has been held that the petitioner therein (employee) shall continue to receive HRA as if the impugned Memorandum bearing No. 5839-F(P) dated 9th July, 2012 issued by the Finance Department, Government of West Bengal and other Memoranda issued on same subject are not in force.

I have no reason to differ from the findings and the directions passed by the Coordinate Benches in the writ petitions involving the same or identical issue.

In the aforesaid facts and circumstances, I hold that the petitioner shall continue to receive the HRA as he was getting till June, 2023 with applicable enhancement, if any, that has taken place in the meantime from January, 2025 which shall fall due in February, 2024 and continued to received the same

month by month unless, in contrary, finding is arrived at in the pending appeal. It is also made clear that in the event the appeal in Mita Majumder (supra) succeeds then subject to the directions given by the Appeal Court while deciding the said matter the arrears between July, 2023 till December, 2024 shall be paid or any recovery of the excess amount, if any, shall take place. The petitioner shall be entitled to approach the employer for the arrear amount if any, after the appeal is decided.

Nothing further remains to be adjudicated in this writ petition and the same is disposed of.

All parties are to act on the server copy of this order duly downloaded from the official website of the Calcutta High Court.

(Arindam Mukherjee, J.)