

Neutral Citation No. 2024:PHHC:022828

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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RSA-2238-1995 (O&M)
Date of Decision: 12.02.2024

State of Punjab and others

... Appellants

Vs

Surinder Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Amandeep Singh Samra, AAG, Punjab
for the appellants.

None for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. State-defendants are in second appeal before this Court challenging the concurrent findings recorded by both the courts below.
2. Surinder Kumar, plaintiff-respondent, who was working as a Teacher, filed a suit for declaration to the effect that he is entitled to house rent allowance and deduction of Rs.4475/- made from his salary, is illegal, null and void. He pleaded that his wife is serving with the Directorate of Education, U.T., Chandigarh and is posted at a distance of more than 25 KM. Deduction of house rent allowance received by him w.e.f. November, 1986 to August, 1988 has been made from his salary by the defendant-State claiming that he is not

entitled to it as his wife is also receiving HRA from her employer. Reliance has been placed upon the clarificatory instructions issued by the Government of Punjab, Department of finance, vide letter No. 7/13/90-P-1 dated 22.08.1991.

3. Upon notice, defendants filed a written statement wherein besides taking preliminary objections, it was submitted that during audit it was found that irregular payment of HRA has been made in a number of couple cases including that of the plaintiff and on the basis of government instructions, action has been taken. It was stated that the plaintiff-respondent was issued notice before effecting recovery and the deduction have been made by giving him full opportunity to explain.

4. Replication was filed by the plaintiff-respondent controverting the averments of the written statement. On the basis of the pleading of the parties, issues were framed and after the parties led evidence, trial Court by judgment dated 01.04.1995 decreed the suit holding that the plaintiff is entitled to the house rent allowance as per rules and monthly deduction of Rs.4475/- from his salary is illegal. State-defendants remained unsuccessful before the first appellate Court and the appeal was dismissed by judgment dated 11.05.1995 leading to the institution of the instant second appeal.

5. I have heard the State counsel and examined the record with his able assistance.

6. In order to determine the controversy, the examination of the Government instructions dated 22.08.1991, Ex.D-1/A is necessary.

These instructions provides that where both husband and wife are serving the government and are posted at places which are at a distance of more than 25 KM, they are entitled to house rent allowance separately.

7. In the present case, there is no dispute that both the respondent and his spouse are serving under two different governments and are posted at different stations. While stepping into the witness box, plaintiff-respondent categorically deposed that the station of posting of his wife is at Chandigarh which is more than 40 KM from Ropar, where he is serving and that they are residing separately. He has produced a copy of ration card, Ex.PX, and gas connection, Ex.PY to establish that he is residing at Kurali. In his evidence, he has also established that his wife is residing at Chandigarh in a house allotted to her by the Chandigarh Housing Board. Plaintiff-respondent has therefore, established the case that the couple is residing separately at different places, which are at a distance of more than 25 Kms. Although, Swaran Singh DW-1, Drawing and Disbursing Officer, who is also the Head Master of Government High School, Mianpur, deposed that the couple is staying together in Sector 44, Chandigarh but in his cross-examination he denied that he has seen them residing together. His testimony is based on hearsay and has been rightly discarded by both the courts. He could not deny that the place of posting of the couple is at a distance of 35-40 KM. Moreover, merely because of an audit objection, the payment of house rent allowance cannot be stopped nor can the

amount paid be deducted from the salary of the plaintiff-respondent.

8. In view of the unimpeachable evidence on the record, this court is of the view that there is no illegality or infirmity in the judgments and decrees passed by the courts below, which deserve to be upheld.

9. Finding no merit in the appeal, it is hereby dismissed with no order as to costs.

10. Pending application, if any, shall stand disposed of.

12.02.2024
pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No