

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

Present:

THE HON'BLE JUSTICE JAY SENGUPTA

WPA 25634 of 2023

Lily Chatterjee and another
versus
The State of West Bengal and others

For the petitioners

Mr. Siddhartha Banerjee
Mr. Abhisek BaranDas
Ms. Srijoni Chongdar
Mr. Soumyajit Majumdar

For the State

Mr. Bhaskar Prasad Vaisya
Mr. Gourav Das

Heard on

26.03.2025

Judgment on

26.03.2025

JAY SENGUPTA, J:

This is an application, principally directed against certain orders under directions passed by the respondent authorities contemplating to recover from the petitioners, hefty amounts on

an allegation of overdrawal of House Rent Allowance (HRA). Both the petitioners were directed by the authorities concerned to return large amounts of money towards refund of allegedly overdrawn amount of HRA, that compelled the petitioners to approach this Hon'ble Court.

Upon service, the respondents appeared in the matter.

Learned counsel for the petitioners submits as follows. The petitioners are approved Assistant Teachers at Rahara Bhabanath Institution for Girls (Higher Secondary). The spouses of the petitioners were engaged in private companies and had been receiving House Rent Allowance (HRA). The husband of the petitioner No.1 retired on 13th February, 2014 and since his date of retirement, he has not drawn any HRA. The husband of the petitioner No.2 has also not received any HRA since April, 2015 from his private employer. Towards the end of 2017, an amount of Rs.56,152/- was demanded from the petitioner No.1 towards refund of allegedly overdrawn HRA. The basis of such demand was the HRA previously drawn by her husband during the relevant period. Similarly, an amount of Rs.1,24,698/- was also claimed from the petitioner No.2 on an allegation of receipt of excess HRA fraudulently drawn. In terms of an earlier order passed by a Coordinate Bench, a report in the form of an affidavit was submitted on behalf of the District Inspector of Schools(S.E.), Barrackpore, the respondent No.5. In

his report the respondent No.5 placed sole reliance on the Memorandum of the Finance Department (Audit Branch), Government of West Bengal bearing No.8012-F(P) dated 27th December, 2018, that followed an earlier Memorandum of the Finance Department (Audit Branch), bearing No.5839-F(P) dated 9th July, 2012. According to the respondent No.5, it was by reason of the said Memoranda that the writ petitioners were held responsible to refund the respective amounts. A Coordinate Bench of this Court by the judgment dated March 16, 2021 passed in **WPA 1389 of 2018** (*Mousumi Biswas & Ors. State of West Bengal & Ors.*) has quashed the aforementioned Memorandum of 2018. An appeal being **MAT 1023 of 2021** (*The State of West Bengal & Ors. vs. Mita Majumder & Ors.*) against the said judgment and order of the said Coordinate Bench is pending. But, no order of stay has been passed in the said appeal. Relying on this judgment, relief has been granted to a similarly circumstanced individual by an order dated 21.05.2024 passed in *WPA 14006 of 2024*. In view of the same, no recovery should be made from the writ petitioners on account of allegedly overdrawn HRA.

Learned counsel appearing on behalf of the State denies the allegations made in the writ petition and submits that if, at all, any relief is granted to the petitioners, the same has to be subject to the decision of the appeal being MAT 1023 of 2021.

It appears that the above-referred memorandum of 2018 was quashed by a Coordinate Bench of this Court. However, an appeal is pending over the issue. But, no stay has been granted in the said appeal.

Relying on the said decision, another Coordinate Bench of this Court has granted appropriate relief in favour of similarly circumstanced individual.

In the present facts which are quite similar, I find no reason to take a different view.

In these circumstances, the concerned respondent authorities are restrained from recovering from any of the petitioners, any amount, on an allegation of HRA overdrawn by the petitioners. The respondents shall also not insist upon refund of the amounts indicated in the writ petition or any portion thereof towards refund of allegedly overdrawn HRA. The respondents shall continue to pay to the writ petitioners HRA without any interruption.

It is, however, made clear that the payment of HRA in terms of this order is subject to the result of the above referred pending appeal.

Accordingly, the writ petition is disposed of.

As affidavits were not called for, allegations contained in the writ petition are deemed not to have been admitted.

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

(Jay Sengupta, J.)

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