

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

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 22104 of 2009

Mrs. Jayanti Das & Anr.

-Vs.-

The State of West Bengal & Ors.

For the Petitioners : Mr. Subir Sanyal,
Mr. Sumitava Chakraborty,
Ms. Bratati Pramanick.

For the State : Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee.

Heard on : 17.12.2024

Judgment on : 16.01.2025

Partha Sarathi Chatterjee, J.:-

1. The present writ petition has been instituted challenging the legality of Memo. *vide*. No. 26/09 dated 14.09.2009, issued by the Secretary of Dwarhatta Rajeswari Institution, P.O. Dwarhatta, District Hooghly, a Non-Government Aided Educational Institution (hereinafter referred to as 'the school'). The memo. communicated the decision of the Managing Committee of the school to stop the payment of the petitioners' House Rent Allowance (in short, HRA). The petitioners also challenge

the justification for this decision and seek a directive to the respondents to pay their arrears and current HRA.

2. Before addressing the contentious issue, it would be prudent to outline the essential facts, as projected in the writ petition.

3. The petitioners are approved assistant teachers at the school. The husband of petitioner No. 1 is employed with the Ministry of Railways, while the husband of petitioner No. 2 is employed with the Geological Survey of India.

4. In 2009, the school authorities instructed both petitioners to submit the pay slips of their husbands. In response, the petitioner no. 1 made a representation to the respondent no. 5, requesting clarification on the reasons for issuing such an instruction. In reply, the respondent no. 5, by a letter dated 26.06.2009, informed petitioner no. 1 that the pay slip was required for submitting the grant-in-aid and salary requisition. Subsequently, in another letter dated 27.06.2009, referring to two memoranda vide nos. 31-SE(B)/IM-5/2003 dated 15.01.2003 and 97-SE(B)/IM-24/2001 dated 07.03.2001, the respondent no. 5 informed the petitioner no. 1 that, in accordance with the aforementioned memoranda, her husband's pay certificate was required to be submitted.

5. In view of these circumstances, both petitioners submitted a letter dated 17.07.2009 to the respondent no. 5, referring to a memorandum dated 08.11.1988 issued by the Ministry of Finance, Government of India. In the letter, they contended that their husbands are governed by their respective independent service conditions, and therefore, the HRA received by them cannot be merged, linked, or adjusted with the petitioners' HRA.

6. As evident from the memorandum dated 20.08.2009 forwarded to the petitioners, upon receiving the petitioners' representation, the issue was referred to respondent no. 4 for his opinion. Subsequently, by a memorandum dated 14.09.2009, the respondent no. 5 informed the petitioner no. 1 that the Managing Committee had unanimously resolved to stop the payment of her HRA, effective from October 2009, and instructed her to adhere to G.O. No. 97-SE (B) dated 07.03.2001, issued by the Government of West Bengal, School Education Department, Budget Branch. A similar course of action was taken with regard to the petitioners' representation. Consequently, the present writ petition has been filed.

7. The State resisted the petition by filing an affidavit-in-opposition. The defence taken therein, in brief, is that, within the limits of the resources available to the State, it formulated a policy to provide HRA to its employees and the teaching and non-teaching staff of Non-Government Aided Educational Institutions. Under this policy, a combined cumulative ceiling limit of HRA for both husband and wife, regardless of their places of employment, was set at Rs. 2000 per month, which was later increased to Rs. 6000 per month. The State contended that HRA is a compensatory allowance and, as such, cannot be treated as a source of profit. It is provided to compensate for the lack of amenities available to the employee, and once accommodation is provided to the employee, they cease to be entitled to it. While HRA is a statutory right, it is subject to certain restrictions. The petitioners did not and cannot challenge this policy of the State.

8. The record does not contain any affidavit-in-reply to the affidavit-in-opposition filed by either of the petitioners.

9. Mr. Sanyal, learned advocate representing the petitioners, drew my attention to a relevant extract from Swamy's Handbook and argued that, by issuing a notification dated 08.11.1988, the Ministry of Finance, Government of India clarified that no restriction should be imposed solely on the grounds that the husband or wife is also a government servant and they are living together in hired or owned accommodation. In such cases, the normal amount of HRA should be granted to them according to their entitlement, subject to the fulfilment of other conditions for drawing the allowance.

10. He contended that the petitioners' husbands, being central government employees, are governed by their respective independent service conditions, just as the petitioners are governed by their own independent service conditions. According to him, the petitioners' HRA cannot be denied solely on the grounds that their husbands receive HRA.

11. He elaborated on this issue by contending that the State of West Bengal, relying on the fact that the Central Government pays HRA to its employees, cannot absolve itself of the responsibility to pay HRA to the petitioners, who are approved teachers at a Non-Government Aided School. He asserted that by denying the petitioners their HRA, the State Government is attempting to gain financially at the expense of the Central Government's funds, which, in his view, is impermissible. In support of his argument, he referred to a decision of a coordinate Bench of this Court referred in a batch of writ petitions preferred by *Mousumi Biswas & Ors*, reported in *2021 LabIC 2209 (Mousumi Biswas & Ors. Vs. State of West Bengal & Ors.)*.

12. In response, Mr. Chattopadhyay, the learned advocate for the State, contended that under the terms of the employment contract, the petitioners are entitled to

receive House Rent Allowance (HRA), subject to certain ceiling limits and conditions. He clarified that in cases where the petitioners' husbands are employed either by the Central or State Government, regardless of their places of work, and if the HRA received by the husbands exceeds the stipulated ceiling limit, the petitioners would become ineligible to receive HRA. Mr. Chattopadhyay further argued that the judgment delivered in the case of *Mousumi Biswas & Ors. (supra)* was pronounced from a different perspective and, therefore, is not applicable to the current case. Additionally, he informed that the State has already filed an appeal challenging the decision in the case of *Mousumi Biswas & Ors. (supra)*.

13. Article 43 of the Constitution of India outlines a directive principle, stating that the State shall strive to secure, through suitable legislation, economic organization, or other means, to all workers—whether agricultural, industrial, or otherwise—a living wage, along with conditions of work that ensure a decent standard of life. It is important to note that the concept of a living wage, which varies from time to time, is a step above the fair wage, as it must not only cover the basic essentials such as food, shelter, and clothing but also provide for a level of frugal comfort, as determined by human standards. However, the constitutional directives enshrined in Articles 39 and 43 would be rendered ineffective if the State resorts to unreasonable classifications among employees within the same establishment, whether publicly financed or financed by private enterprises.

14. It is well established that an employee's right to receive salary and allowances is a property right. Initially, this right was considered a fundamental right. However, following the deletion of Article 33 by the 44th Amendment of the Constitution in 1978 and the insertion of Article 300A in the Constitution of India, this right has acquired the status of a constitutional right. While it is true that the right to salary

arises from the terms of an employment contract, it takes on the character of tangible movable property once it accrues and becomes due. In this context, it would be useful to refer to the decisions reported in *AIR 1965 Cal 484 (Aswini Kumar Rath v. Mukherjee)*, where it was held that while a government employee, or an employee of a government undertaking or establishment receiving government grants, is entitled to recover arrears of salary for services already rendered at the applicable rate of pay during that period, they do not have a legal right to have their pay fixed at a particular rate, either by way of an increase in the existing pay scale or by preventing any reduction, unless they possess a statutory right to such adjustments.

15. At the same time, it must be borne in mind that Article 309 of the Constitution empowers the State to make rules governing the conditions of service for individuals appointed to public services and posts in connection with the affairs of the Union or any State. It is well-established in law that the fixation of pay scales is fundamentally an executive function. The government determines pay scales based on the recommendations of a Pay Commission, which, after reviewing all relevant factors, thoroughly examines the issue and proposes the appropriate pay scale for a particular category of employees. Typically, unless there is a clear case of discriminatory treatment, there is no justification for interfering with the government's determination of pay scales and a carefully evolved pay structure is not to be ordinarily disturbed as it may upset the balance and cause unavoidable ripples in other cadres as well.

16. A memo. No. 306(5)-Edn.(B)/IM-34/84 dated 6.11.1984 regarding compensatory HRA modified Memo No. 5-Edn (B) dated 11.1.1982 clarified that HRA is admissible to both the husband and wife so long as the pay drawn by each of them does not exceed Rs. 500 per month. In that memo. dated 6.11.1984, in partial

modification of the memo dated 11.1.1982, it was prescribed that if both spouses are teachers/non-teaching employees or one is a teacher/non-teaching employee of a District School Board and the other works for the State Govt./Central Govt./Public Undertakings/Local Bodies, both are eligible for HRA at the usual rates as per Order No. 475-Edn(B) dated 17.01.1982, provided their combined pay does not exceed Rs. 1000/- per month, without requiring to produce a rent certificate.

17. Like its employees, the State Government also establishes pay commissions for the fixation and revision of pay for both teaching and non-teaching staff in Non-Government Aided Educational Institutions from time to time. The Revision of Pay and Allowances (ROPA), 1998, which applies to the employees of West Bengal Recognised Non-Government Aided Educational Institutions, includes provisions for House Rent Allowance (HRA) for both teaching and non-teaching staff. The ROPA, 1998 stipulates that, effective from January 1, 1996, or from the date an employee opts to receive pay in the revised scale, whichever is later, the employee shall be entitled to HRA at the rate of 15% of their basic pay in the revised scales, subject to a maximum of Rs. 2000 per month, regardless of their place of posting. In cases where both the husband and wife are drawing HRA, the total ceiling for the combined HRA of both individuals shall be Rs. 2000 per month, irrespective of the amount of rent paid, and without the need for submitting rent receipts. Furthermore, employees residing in their own houses are eligible for HRA, provided they submit a declaration stating that they are paying or contributing towards house or property tax or maintenance of the house. Therefore, entitlement to HRA is not absolute but is subject to certain restrictions and conditions, including the requirement to furnish the necessary declaration as specified.

18. Following complaints about staff members drawing HRA while their spouses also received HRA from other sources, the Deputy Secretary to the Government of West Bengal, School Education Department, issued a memo. vide. No. 97-SE (B)/ IM-24-2001, dated 07.03.2001. The memo. clarified that if both spouses are employed as Teachers, Non-teaching staff, or in Non-Govt./Sponsored Educational Institutions (including Libraries and District Primary School Council), and one spouse works for the State/Central Govt. or Public Undertakings, HRA may be granted at 15% of basic pay, up to Rs. 2000 per month. This is subject to a declaration that the combined HRA from both offices does not exceed Rs. 2000. The memo. also reminded that under ROPA 1998, staff must submit a declaration to the Head of their Institution regarding their spouse's HRA. Without this declaration, the staff member is ineligible for HRA. The memo dated 7th March 2001 further clarified that if an employee is provided with family accommodation by an Aided Institution, the State Government, Central Government, or an Autonomous Public Undertaking, or is provided with quarters, they shall not be entitled to HRA.

19. Meanwhile, a question arose regarding whether a teaching/non-teaching employee of a non-Government Aided Institution, whose spouse is employed by a purely private organization with no financial assistance from the Government, would be entitled to House Rent Allowance (HRA). In this regard, a memo. vide. No. 31-SE(B)/ IM-5/2003 dated 15.01.2003 was issued which clarified that, after careful consideration, the State framed a rule that a teaching/non-teaching employee of a Non-Government Aided Institution is eligible to receive HRA at 15% of their basic pay, subject to a maximum of Rs. 2000 per month, as per the prevailing rules, regardless of the HRA drawn by their spouse from the private organization, which receives no financial assistance from the State or Central Government.

20. In the case of *Mousumi Biswas & Ors. (supra)*, the scope of the writ petition was framed with the following question: "*whether the State can curtail the right of the petitioners to draw HRA, based on the premise that their spouses, employed with private organizations, are receiving separate HRA, thereby triggering the ceiling envisaged by the ROPA Memorandum of 2009, by simply issuing the impugned clarificatory corrigendum?*" However, after hearing the parties and considering the materials presented, the Bench ruled that extending conditions such as the ceiling limit of HRA and other provisions of the prevailing rules to employees whose spouses are employed in purely private organizations was not appropriate. However, in the present case, the husbands of both teachers are employed with the Central Government. Therefore, I agree with Mr. Chattopadhyay that the judgment in *Mousumi Biswas & Ors. (supra)* is distinguishable on the facts of the present case, and as such, the petitioners' reliance on this judgment is misplaced. However, it is important to note that the Bench observed that the principle of a "*common ceiling for HRA*" applicable to working spouses was limited to those employed in the government sector. This observation clearly goes against the petitioners' case.

21. The clause 13 of ROPA, 2009, concerning teaching and non-teaching employees of non-Government Aided Educational Institutions, specifies that, while maintaining all existing terms and conditions, the ceiling for the HRA drawn by both husband and wife was increased to Rs. 6000 per month. Similarly, under ROPA, 2019, the ceiling limit was further raised to Rs. 12,000 per month, with the provision that the existing terms and conditions for drawing HRA would continue to apply.

22. A memo. vide No. 955-SE(Law)/SL/5S-1221/09 dated 27.07.2011 addresses the issue of HRA entitlement for married working employees who are compelled to live in separate accommodations due to the distance between their workplaces, in

compliance with the order dated 30.03.2010 passed in W.P. No. 17501 (W) of 2009. After careful consideration, the Hon'ble Governor decided that if the husband and wife live together in the same accommodation, only one of the married employees will be entitled to HRA. However, if the distance between their workplaces is more than 50 km but less than 150 km and is not commutable daily using generally available transport, both employees may be eligible for full HRA, subject to approval from the concerned department. If the distance is 50 km or less, full HRA will be granted to both employees if they are required to live separately due to their job. This entitlement is contingent upon submitting necessary details, including the places of work of both spouses, the distance between them, rent receipts, and other relevant documents as outlined in the memorandum.

23. Therefore, it is clear and evident that the longstanding position of the State Government has been that when both the husband and wife are working employees, only one of them will be entitled to draw HRA. However, both may be allowed to draw HRA from their respective employers, subject to certain ceiling limits. In the decision rendered in *Director, Central Plantation Crops Research Institute, KESARABOD vs. M. Purushotaman*, reported at 1994 Supp3 SCC 282, it was clarified that HRA is not a right but a compensation in lieu of accommodation. It is provided because the employer is unable to provide accommodation, and the employee will cease to receive HRA once official accommodation is provided.

24. It would not be out of context to mention that, despite being aware of the longstanding position of the Government regarding the payment of HRA, the petitioners accepted the job. Admittedly, the origin of government services or employment in non-Government Aided Establishments is contractual, with an offer and acceptance in each case. However, once an individual is appointed to a post or

office, they acquire a status, and their rights and obligations are governed by statute or statutory rules, which can be altered unilaterally by the Government.

25. In the present case, although the petitioners have not challenged the vires, validity, or legality of the memoranda dated 7th March 2001 and 15th January 2003, it can still be argued that it is well-settled that, even in the absence of statutory provisions or rules, the relationship between the State and its employees may be governed by administrative instructions, typically issued in the form of circulars or memoranda by the authorities, in accordance with prescribed procedures and under the powers conferred by Article 162 of the Constitution of India. It is also well-settled that executive instructions can supplement statutory rules or address areas not covered by the rules, but they cannot supplant or contradict statutory provisions or diminish their effect. The petitioners have not shown that the two memoranda were issued outside the scope of any statutory rules or that they were otherwise flawed.

26. Indisputably, the fixation of the HRA ceiling limit and making its entitlement subject to certain conditions, where one spouse works as a teaching or non-teaching staff member, librarian, etc., in a Non-Government Aided Educational Institution, and the other works in the Government sector, is a policy decision of the Government. Judicial review of such policy decisions, particularly financial policy decisions, is limited. As observed earlier, pay and allowance fixation is based on recommendations from Pay Commissions, which involve technical experts. Courts generally refrain from intervening in policy matters requiring such expertise, unless the policy is unconstitutional, unlawful, arbitrary, irrational, or an abuse of power. In the present case, the petitioners have failed to provide any evidence to demonstrate that the policy decision regarding the ceiling limit of HRA in such circumstances

violates any constitutional provision, statute, or statutory rule, or is arbitrary, irrational, or an abuse of power. The petitioners have failed to present any material to demonstrate that the State is prohibited from considering the fact that the spouse of the teaching and non-teaching staff of a Non-Government Aided Educational Institution is employed by either the Central Government or the State Government while determining the ceiling limit for HRA. Despite such a prohibition, the State has been doing so and, as a result, has unlawfully acquired financial benefits at the cost of Central Government funds.

27. Therefore, in light of the discussion made hereinabove and in view of the settled legal position as mentioned earlier, I do not find any justification to interfere with the impugned memo dated 14.09.2009, and as such, no interference is warranted in this writ petition.

28. Consequently, the writ petition is dismissed. However, there shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)