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2026

Ct. No. 24

Ab

WPA 12890 of 2024

Sanjukta Rakshit
Vs.
The State of West Bengal and others.

Mr. Malay Bhattacharya,
Mr. Subhrajyoti Ghosh.

... for the petitioner.

Mr. Bhaskar Prasad Vaisya, Ld. AGP,
Ms. Rupsha Chakraborty.

... for the State.

1. The affidavit of service filed today is taken on record.
2. In spite of several notices, there is no representation on behalf of the school. In fact, in spite of the order of May 16, 2024, directing the school authorities to disclose by way of a report the reason for non-payment of the HRA of the petitioner, no such report has been filed nor is the school represented.
3. The writ petitioner is an Assistant Teacher under the State. The subject matter of challenge is Memo No. 5839-F(P) dated July 9, 2012 and Corrigendum dated December 27, 2018, issued by the Secretary, Finance Department, Government of West Bengal and the Memo No. 68-ES/Audit/12A-47/17 dated November 16, 2017, issued by the Special Secretary, School Education Department, Government of West Bengal.

4. House Rent Allowance paid to Assistant Teachers under the State is normally linked to the HRA paid to their spouses who are also employed with the State Authority. The object is to ensure that a double benefit of HRA is not availed by a couple staying under the same roof.
5. The impugned memos however, sought to apply the said rule even to those Assistant Teachers whose spouses are employed in Non-State private organization.
6. As a consequence whereof, such person like the petitioner is either denied HRA or allowed the same only to a limited extent under a ceiling. The issue was gone into and addressed in great detail by a Co-ordinate bench of this Court. A series of writ petitions were heard on the issue, and judgment was delivered inter alia, in WPA 1389 of 2018 (**Mousumi Biswas and another vs. State of West Bengal and others**) on March 16, 2021.

“48. Therefore, to summarize the key takeaways of the findings of the Court, the same is stated as follows:

- a) The Audit Memo dated November 16, 2017 and Memo No. 2554/G-SE dated December 28, 2017 are held to have been issued without authority of law and is set aside on the grounds of being issued on irrelevant considerations and being manifestly arbitrary/discriminatory, in effect as per the law laid down in *Subhasis Negel* (supra).
- b) Pertaining to the State’s access to limited pool of resources which necessitated this purported rejig of policy in the first place, such argument stands self-demolished for the reason that employees of State aided colleges and universities are getting the full benefits of drawal of HRA, notwithstanding that their spouses might be engaged in private employment. With a lack of a certain legitimate objective being met by the State, this therefore, becomes a clear case of unreasonable

classification and hence is violative of the tenets of equality enshrined under Article 14 of the Constitution of India.

c) Notwithstanding the unreasonable classification which was carried out in the case of the petitioner which is patently violative of Article 14 of the Constitution of India, no technical or expert findings or relevant factors had been furnished by the State Respondents to justify the need for the alleged modification of such policy concerning the drawal of HRA, by the petitioner. There is no demonstration as to the extent of fiscal prudence sought to be achieved by the State by purportedly bringing into consideration the HRA of the spouses (engaged in private employment) of those employees who are serving in nonGovernment/Aided/Sponsored educational institutions, to trigger the common ceiling under the ROPA Memorandum of 2009 and thereby specifying the quantum of funds saved, by the public exchequer. Therefore, such an irregular policy decision merits an interference of this Court as per the principles laid down in *Subhasis Negel* (supra) and *Federation of Railway Officers Association* (supra).

d) The impugned, clarificatory Corrigendum dated December 27, 2018 read with the Finance Department Memo No. 5839-F(P) dated July 9, 2012 is applicable in the matters of grant of HRA to a state government employee, who are governed by the altogether separate West Bengal Service (ROPA) Rules, 2009 issued vide Memo No. 1691-F dated February 23, 2009 and for the self-same reason, it is inapplicable to the category of employees employed in nongovernment sponsored institutions, who are governed by the ROPA Memorandum of 2009 for Non-Governmental Educational Institutions, issued by Memo. 46-SE(B) dated February 27, 2009.

e) The impugned, clarificatory corrigendum dated December 27, 2018 (which was issued post the initiation of the present litigation) in so far 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 9, 2012. The impugned, clarificatory corrigendum could not have risen above its source and is accordingly set aside to such degree of inconsistency as aforesaid.

49. In view thereof, the State Respondents are hereby directed to ensure complete conformity in the payment of HRA which is payable to the petitioner in accordance with the ceiling envisaged in the ROPA Memorandum of 2009 which is applicable to them along with any connected memos, that maybe applicable. If in any case, the payment of such HRA has been stopped in pursuance of the Audit Memo dated November 16, 2017, Finance Department Memo No. 5839-F(P) dated July 9, 2012, and Memo No. 2554/G-SE dated December 28, 2017 or other similar memos that have been issued by the various

District Inspectors of Schools (S.E) across the State of West Bengal, the arrears of the same must be paid to the petitioner within six weeks from the date of this judgment.”

7. The decision in Dr. Paromita Majumdar vs. The State of West Bengal & Ors. (WPA 21525 (W) of 2014) has also been referred along with Sathi Hansda vs. State of West Bengal & Ors. (WPA 14024 of 2023) and Laboni Sarkar vs. The State of West Bengal & Ors.).
8. I do not find any reason to take a different view from the one taken by their Lordships in the above referred decisions. I have been informed by Mr. Vaisya, learned Additional Government Pleader appearing for the State, that an appeal preferred by the State from one of such orders has been dismissed for default and has not yet been restored.
9. In that view of the matter, this Court directs the State to first release HRA benefits to the petitioner in terms of the applicable rules (excluding the impugned Memos), together with complete arrears till date. Any recoveries already made, shall be refunded to the petitioner, within a period of six weeks from date. Any order of recovery still pending, shall remain automatically stayed.
10. The petitioner shall continue to receive HRA as if the impugned Memos are not in force.
11. For the purpose of complying with the aforesaid

order, the School authority shall forthwith send appropriate requisition/bills and/or calculations to the D.I. of Schools, who shall release payment, within the time stipulated hereinabove.

12. With the aforesaid observations, the writ petition shall stand disposed of.

13. There shall be no order as to costs.

14. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Reetobroto Kumar Mitra, J.)