IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:
The Hon'ble Justice Tapabrata Chakraborty

W.P. No.21525 (W) of 2014
Dr. Paromita Majumdar
versus
The State of West Bengal and Ors.

For the Petitioner : *Mr. Indranil Roy,*
Mr. Arnab Mukherjee.

For the State Respondents : *Mr. Pranab Kumar Datta,*
Ms. Chaitali Bhattacharya,
Ms. Sukla Das Chandra.

Judgment On : **23rd December, 2015.**

Tapabrata Chakraborty, J.

The instant writ application has been preferred challenging, inter alia, a memorandum dated 1st August, 2013 issued by the respondent no.3 by which the petitioner's claim for drawal of full House Rent Allowance (hereinafter referred to as HRA) was refused relying upon para 11 of the Finance Department memorandum no.1691-F dated 23rd February, 2009.

Shorn of unnecessary details, the facts are that the petitioner was initially appointed to the post of Lecturer at Vidyasagar College for Women, Kolkata (hereinafter referred to as the said college) on 1st December, 1999. Subsequent thereto, she was placed in the post of Assistant Professor in the Department of Geography of the said college. The pay of the petitioner was fixed from time to time and up to July, 2006, the petitioner was receiving HRA amounting to Rs.1448/- per month. The

petitioner got married with Dr. Anindya Datta on 30th June, 2006, who was employed at Netaji Nagar College, Kolkata. After marriage the petitioner continued to draw Rs.1448/- as HRA and her husband drew an amount of Rs.786/- towards HRA and the total HRA drawn by both was of Rs.2234/-. The petitioner stopped drawing HRA on and from December, 2007, as her husband joined the Indian Association for the Cultivation of Science, Jadavpur, Kolkata and he drew the entire HRA from his new institution which was under the Central Government. On and from 10th August, 2010, the petitioner's husband left his service at Kolkata and joined Guru Gobind Singh Indraprastha University, New Delhi as an Associate Professor and that as such he had to arrange separate accommodation at New Delhi and the petitioner, accordingly, became entitled to HRA as she was compelled to maintain a separate accommodation for herself in Kolkata. As such, the petitioner claimed HRA from the college and by a resolution dated 1st December, 2010 the Governing Body of the said college allowed the petitioner's claim with effect from 10th August, 2010 and forwarded the petitioner's claim to the respondent no.5 by a memorandum dated 14th December, 2010. Subsequent thereto, by a memorandum dated 1st August, 2013 issued by the respondent no.3 the petitioner's claim towards HRA was refused observing, inter alia, that "there is no scope to deviate from the G. O. regulated by para 11 of Finance Deptt. Memo. No. 1691-F dt.23.3.2009 under any circumstances in this regard." The relevant part of para 11 runs as follows :

"11. ***House Rent Allowance*** – With effect from the 1st April, 2009, the house rent allowance admissible to a Government employee shall be

15% of his revised basic pay, i.e., aggregate of the Band Pay plus Grade Pay and NPA, if any, in the revised Pay Structure subject to a maximum of Rs. 6,000/- per month. The ceiling of house rent allowance drawn by husband and wife together shall also be raised to Rs. 6,000/- per month.

The existing terms and conditions of drawal of house rent allowance by Government employees living in their own house or in a rented house shall continue to apply."

Mr. Roy, learned advocate appearing for the petitioner submits that the petitioner and her husband are unable to share the same roof since the husband is posted at a different place outside the West Bengal, which is at a distance of about 1300 kms from Kolkata and in the backdrop of such fact there is no restriction upon the petitioner to avail full HRA in terms of para 11 of the memorandum dated 23rd February, 2009.

He further submits that the impugned memorandum dated 1st August, 2013 does not reveal any independent application of mind on the part of the concerned respondent and the petitioner's claim has been rejected by a cryptic order without considering the scope and ambit of para 11 of the memorandum dated 23rd February, 2009.

According to Mr. Roy, para 11 of the memorandum dated 23rd February, 2009 does not mention any provision regarding denial of such benefits to the employee concerned who is compelled to maintain a separate establishment and who does not share a common roof with his/her spouse due to their different places of employment. It only prescribes a ceiling limit without specifying the distance between the places of employment of the spouses and as such the same cannot be

made applicable in case of the petitioner to deny the benefits of full HRA to her.

He further argues that the logic behind the fixation of ceiling of HRA is based on the assumption that the husband and wife shall share the common roof while discharging the duties in the respective working places. Both the husband and wife cannot draw HRA in respect of a particular accommodation where they are sharing a common roof for attending their respective places of employment.

In support of his arguments Mr. Roy has placed reliance upon the judgment delivered in the case of **Latika Sahu –vs- The State of West Bengal & Others, reported in 2013 (1) CHN 623**.

Per contra, Mr. Datta, learned senior advocate appearing for the State respondents, assisted by Ms. Bhattacharya, submits that the HRA will be available to the petitioner as per the provisions of the West Bengal Service Rules (hereinafter referred to as WBSR) and that a scheme was set out in the said Rules pertaining to grant of HRA to government officer staying at Calcutta, Alipore or Howrah through the Calcutta House Rent Allowance Rules, 1926 (hereinafter referred to as the said Rules of 1926). Placing reliance upon Rule 6(a)(i) and Rule 6(a)(ii) of the said Rules of 1926, as incorporated in WBSR Part-II, Apendix-20, Mr. Datta submits that the ceiling limit towards HRA as mentioned in the said Rules of 1926 was altered from time to time and the same was enhanced to Rs.2000/- per month in terms of memorandum dated 30th November, 1998 following Finance Department Resolution dated 27th November, 1995 and the maximum ceiling limit of HRA in respect of husband and wife, being considered jointly, will be of Rs.6000/- per month

even if they reside separately or they serve under different governments.

He further submits that husband and wife in service under State Government or in service under Central Government cannot claim the benefits of HRA independently totalling an amount beyond the ceiling limit as stipulated irrespective of the fact as to whether they are residing in separate accommodation or jointly in the same house. Grant of such HRA benefits to both would tantamount to extension of double benefits. A scrutiny of the Rules pertaining to grant of medical allowance would reveal that such benefit can be availed of at one place only. In support of such contention reliance has been placed upon the West Bengal Health Scheme, 2008 (hereinafter referred to as the said scheme of 2008). Similarly, in respect of Leave Travel Concession (hereinafter referred to as LTC), the benefit may be enjoyed by both husband and the wife together as a one family unit in the government employee's family. In support of such contention, reliance has been placed upon Clause F(iii) of the memorandum dated 7th December, 2005. Reliance has also been placed upon a memorandum dated 24th October, 2007 of the School Education Department in support of the contention that even if the husband and wife are serving under different employers and are living in separate houses at their respective working stations at a distance of more than 250 kms then the benefits of full HRA to both husband and wife will be allowed subject to a maximum of Rs.2000/-.

Mr. Datta further submits that the provisions of the said Rules of 1926, the provisions of Health Scheme and the circulars towards grant of LTC and medical facilities were not placed before

the Hon'ble Appeal Court in the matter of Latika Sahu (supra) and that even though the said judgment has not been challenged, the State Government is not barred from challenging subsequent writ petitions in the backdrop of the magnitude of the financial implications involved and that in such circumstances neither the principle of res judicata nor the principle of estoppel is attracted. In support of such contention, reliance has been placed upon a judgment delivered in the case of **Col. (Retd.) B.J. Akkara –vs- The Govt. of India & Ors., reported in (2006) 11 SCC 709**.

He further argues that the judgment delivered in the case of Latika Sahu (supra) has been rendered in ignorance of the legislation of which the Hon'ble Appeal Court ought to have taken account of and had the memoranda, as disclosed in the affidavit-in-opposition of the instant matter, been disclosed before the Hon'ble Appeal Court, judgment would have been otherwise and that as such this Court should invite the attention of the Hon'ble the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. In support of such contention, he has placed reliance upon a judgment delivered in the case of **Subhash Chandra & Others -vs- Delhi Subordinate Services Selection Board & Others, reported in (2009) 15 SCC 458**.

It has been further argued by Mr. Datta that the para 11 of the memorandum dated 23rd February, 2009 has not been challenged by the writ petitioner and that in the absence of such challenge, the reliefs as claimed are not available to the petitioner.

In reply, Mr. Roy submits that in the government circulars as placed before this Court and as annexed to the affidavit-in-opposition, there is no reference to the said Rules of 1926. There is neither any bar under the said Rules of 1926 nor any bar under para 11 of the memorandum dated 23rd February, 2009 as regards the entitlement of the petitioner to full HRA since the petitioner and her husband are not residing in the same house and are residing at places which are separated by a distance of more than 1300 kms. The memorandum dated 24th October, 2007 pertains to School Education Department and is not applicable to the petitioner. Furthermore, the said circular pertains to employment at working stations within the State and that there is no restriction in the said circular for both husband and wife to avail HRA independently when their working stations are at a distance of more than 250 kms.

According to Mr. Roy, the judgment delivered in the case of Latika Sahu (supra) is squarely applicable to the facts of the instant case. In the said matter also the appellant and the husband of the appellant were residing in separate accommodation and in the said judgment it was categorically observed that the ceiling limit as provided in para 11 of the memorandum dated 23rd February, 2009 cannot be made applicable where the married employed couple are compelled to reside separately in two separate residential accommodation.

He further submits that the petitioner is not a government employee and the provisions of the health scheme as referred to by Mr. Datta are also not applicable to the petitioner as she is an employee in a college.

I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

The undisputed facts are that the petitioner is engaged in an approved educational institution and is residing at Kolkata. The petitioner's husband is employed under the Central Government and he is residing at New Delhi. Both the places of residence are separated by a distance of more than 1300 kms. The petitioner's claimed towards full HRA was considered and recommended by the Governing Body of the said college. The judgment delivered in the case of Latika Sahu (Supra) has already been complied with and the appellant therein has been disbursed the benefits and the State Government did not choose to prefer any appeal against the same.

A perusal of the judgment delivered in the case of Latika Sahu (supra) reveals that the facts involved in the said matter are identical to the facts of the instant case. In the said matter also the claim of the petitioner / appellant was not granted in view of the provisions of para 11 of the Finance Department memorandum dated 23rd February, 2009. In the said judgment the Court considered a principle question as to whether different provisions have been made in the concerned Revision of Pay & Allowance Rules for an employee who lives with his/her spouse in same house with those where the spouse lives in separate accommodation. The said question was answered by observing that the ceiling limit of Rs.6000/- as specified in para 11 of the memorandum dated 23rd February, 2009 cannot be made applicable where the married employed couple are compelled to reside separately in two separate residential accommodation.

A close perusal of the said Rules of 1926 would reveal that the same does not govern the cases where the husband and wife are residing in separate residential accommodation. Furthermore, there is no reference to the said Rules of 1926 in the finance department memoranda dated 30th November, 1998 and 23rd February, 2009. The memorandum dated 24th October, 2007 pertains to School Education Department and the same has no manner of application in the facts of the instant case. The primary issue involved in this matter is as to whether the petitioner is entitled to get full HRA irrespective of the fact that her husband is drawing HRA from his employer. The said issue has already been answered through the judgment delivered in the case of Latika Sahu (supra) and the Hon'ble Appeal Court had arrived at a definite finding to the effect that the ceiling of HRA can only be imposed when both the husband and wife will be in a position to share a common roof for the purpose of attending their respective places of employment. The argument of Mr. Datta and the circulars relied upon by him do not persuade this Court to take any different view.

It is well settled that a Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum and that as such the judgment delivered by the Hon'ble Appeal Court is binding upon this Court.

For the reasons discussed above, the writ application is allowed and the respondents are directed to release in favour of the petitioner full HRA @ 15% of her revised basic salary with effect from 10th August, 2010, within a period of 8 weeks from the date of communication of this order.

With the above observations and directions, the writ application is disposed of.

There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Tapabrata Chakraborty, J.)