

(2016) 11 JH CK 0029
In the Jharkhand High Court
Case No : W.P. (S) No. 2422 of 2015

Aditya Kumar Mishra

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:

Bihar State Employees (House Rent Allowance) Rules, 1980 — Rule 2(b), Rule 5, Rule 6, Rule 9

Citation : (2017) 1 JCR 439

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Bibhash Sinha, Mr. Dilip Kr. Prasad, Mr. Bhupal Krishna Prasad, Mr. Jitesh Kumar, Advocates, for the Petitioners; Mr. Abhay Prakash, J.C. to AAG, for the State; Mr. G.M. Mishra, & Mr. Umesh Mishra, Advocates, for the Intervenor

Final Decision : Disposed Off

Judgement

Mr. Shree Chandrashekhar, J. - Prayer of the petitioners is for payment of House Rent Allowance in terms of Bihar State Employees (House Rent Allowance) Rules, 1980.

Rule 2(b) defines "Rent", which reads as under :

""Rent" means the charges paid by a Government servant as consideration for unfurnished accommodation occupied by him be as a tenant, and the gross rental value of the house as assessed for municipal purpose or otherwise without deduction of the rebate of 10 per cent on account of repairs if he an owner and shall, in both cases, include municipal and other taxes, except service taxes levied separately and prescribed as such that are legally, payable by the occupier".

2. Note appended to Section 3 provides that House Rent Allowance is admissible without reference to the quantum of rent paid to employees drawing up Rs. 1,069/-. In case of employees" pay exceeding Rs. 1,069/-, verification of rent

receipt has been made compulsory. Rule 5 provides restriction on payment of House Rent Allowance. It reads as under :

5. The grant of house rent allowance shall be subject to the following conditions :-

(a) To those Government servants who are eligible for Government accommodation, the allowance will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure; if any, but have not been provided with it.

(b) (i) The allowance shall not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused it. In the latter case, the allowance will not be admissible for the period for which a Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him.

(ii) The house rent allowance drawn by a Government servant who accepts allotment of Government accommodation, shall be stopped from the date of occupation, or from the eight day after the date of allotment of Government accommodation, which-ever is earlier. In case of refusal of allotment of Government accommodation house rent allowance shall cease to be admissible from the date of Government accommodation. In case of surrender of Government accommodation, the house rent allowance, if otherwise admissible, will be payable from the date of such surrender.

Note- In the case of surrender of Government accommodation the house rent allowance, if otherwise admissible, will be payable from the date from which "no accommodation certificate" is issued by the accommodation controlling authority.

(iii) A Government servant debarred from allotment of Government accommodation due to unauthorised subletting or for other breaches of rules, but excluding those covered by clause (b)(i) will be eligible for house rent allowance during the period of such department, subject to the fulfilment of the usual conditions except that the condition that he must have applied for but not provided with Government accommodation will not be enforced in his case.

(iv) Refusal by a Government servant of a quarter of a different class from that for which he is eligible shall not constitute refusal for the purpose of these rules unless he has the option to apply for accommodation of a class next below the one to which he is entitled by virtue of his emoluments and he refuses such accommodation when allotted on the basis of his application.

(v) Refusal by a Government servant of accommodation (other than single room hostel accommodation or hostel accommodation where messing and payment of service charges are compulsory) allotted out of turn on his own application shall constitute refusal for the purpose of these rules, even when the accommodation provided is of a lower class than that for which he is eligible.

(vi) Female Government servants residing in the Working Girls' Hostel, or in Government run hostels are not entitled to house rent allowance, Government servants living in hostels run by autonomous and semi-Government Organisations, which are not run on commercial lines (i.e. State Government employees allotted hostel accommodation are not charged market rent, but a subsidised), would not be entitled to house rent allowance.

(vii) A Government servant who, on transfer, has been permitted to retain Government accommodation at the old station on payment of normal rent or penal rent, will be eligible for house rent allowance at the new station.

(viii) A Government servant who was not in occupation of Government accommodation at his old station and who, on transfer; leaves his family behind at the old station because he has not rented a house or has not been allotted Government accommodation at the new Station will be eligible for house rent allowance for a period of six months from the date of his assumption of charge at the new station or till he rents a house or is allotted Government accommodation at the new station, whichever is earliest. The house rent allowance in such cases shall be regulated as follows without prejudice to the entitlement to house rent allowance with reference to the place of duty in terms of rule 3.

(1) During the first two months of the date of assumption of charge at the new station ? At the same rate at which it was drawn at the old station.

(2) For the next 4 months ? At the rate at which it was being drawn by him at the old station or the maximum amount that would have been admissible to him at the new station, had he taken a residence on rent there, whichever is less.

In either case the grant of House Rent Allowance under these provisions shall not be admissible beyond the date on which the rents a house or is allotted Government accommodation at the new station.

(ix) During the period of transfer not exceeding 90 days, a Government servant shall draw House Rent Allowance at the same rate at which he was entitled to it at the time of transfer. The quantum of the allowance shall, however, be determined with reference to the pay which a Government servant would have drawn but for the transfer. For periods of transfer exceeding 90 days the grant of this allowance shall be regulated with reference to the new headquarters. If a transfer, initially made for a period not exceeding 90 days is later extended, the House Rent allowances shall be paid up to the date of issue of orders extending the transfer or for a period of 90 days, whichever is less.

Note ? For temporary transfer, initially made for a period, not exceeding 90 days, but later extended beyond this period, the benefit of the provisions contained in rule 5 (b) (viii) shall be allowed to the Government servant from the date of issue of the order converting the transfer into a permanent one or at the end of 90 days; whichever is earlier.

3. The learned counsel for the petitioners has referred to Rule 6(c)(iii) to contend

that the condition therein is not satisfied in the case of the petitioners and thus, they are entitled for payment of House Rent Allowance. Rule 6 reads as under :

6.(a) "subject to the provision of clause (b), no Government servant will draw house rent allowance in excess of the amount by which the rent actually paid by him exceeds 10 per cent of his pay.

Comments :- No, Government servant will draw house rent allowance more than ten per cent of his pay.

(b) (i) If the government servant sub-lets or shares a part of his accommodation with one or more adults, not belonging to his family, whether government servant(s) or not, a reduction of 40 per cent or the actual rent charged by him from the sub-tenant-co-sharee, whichever is higher, shall be made from the rent actually paid by him to the landlord for the purposes of computing the amount of house rent allowance admissible to him. A reduction of 40 per cent shall also be made where a part of the accommodation hired by the government servant for which he claims house rent allowance is used for other than bona fide residential purposes.

(ii) If the sub-tenant or co-sharer is also a government servant, house rent allowance will be admissible to him also, the amount of such allowance being calculated on the rent actually paid by him to the main tenant.

Note 1 :- Keeping of servant in the house shall not be deemed to be sub-letting or sharing a part of the accommodation.

Note 2 :- As an exception of the above rule in cases where a Government servant who shares his/her accommodation with his wife/her husband/parent/son/daughter/ unmarried sister who is also an employee of Central Government/ State Government Autonomous Public Undertaking/Semi Government/ Organization such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc. he/she Government servant) may be allowed the option to draw house rent allowance without a reduction of 40 per cent from the rent actually paid by him/her, subject to the condition that the other spouse/parent/son/daughter does not draw any house rent allowance.

Note 3:- The reduction of 40 per cent referred to in clause (b) (i) will not be made where spouse/parent/son/daughter/unmarried sister is/are employed in the private sector or are self-employed or a pensioner or/and is/ are having income exceeding Rs. 250 per month from any property/investment.

(c) A Government servant shall not be entitled to house rent allowance if,

(i) he shares Government accommodation allotted rent free to another Government servant, or

(ii) He/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an autonomous public undertaking or semi-government organization such as a Municipality Port Trust, Nationalised

Banks, Life Insurance Corporation of India etc.

(iii) His wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation, such as Municipality Port Trust, etc. whether he/she resides in that accommodation he/she resides separately in accommodation rented by him/her.

(d) The half-yearly verification of rent receipts as a matter of routine shall be dispense with. The Head of the office in the case of a non gazetted Government servant, the Head of the Department the case of a Gazette Government servant or the Administrative Department if the Government servant himself is head of the Department shall however, have the right to test check the rent receipt and also consider whether the rent claimed is reasonable.

(e) As an exception to clauses (a) and (b) Government servants drawing pay up to [Rs. 1069] other than a Government servant who is living in a house owned by him and drawing pay up to [Rs. 1069] shall be eligible for house rent allowance at the rates specified in rule 3 even if they share Government accommodation allotted to other Government servant [excluding those mentioned in (c) above] or private accommodation of other Government servant [including those mentioned in (c) (iii) subject only to the condition that they pay rent or contribute towards rent or house or property tax but without reference to the amount actually paid or contributed. As an exception to rule 8, the grant of house rent allowance to a Government servant living in a house owned by a Hindu undivided family in which he is a co-parcener, and whose pay does not exceed [Rs. 1069] will be without reference to the amount of the gross rental value as assessed by the Municipal Authorities. Thus in the case of such Government servants it will be not necessary to insist on the production of the assessment of the rental value by the Municipal Authorities for purposes of claiming house rent allowance.

Note:- In case where husband/wife parents, children, two or more of them being Central Government servants or employees of State Governments, autonomous public undertaking or semi-Government organisations like Municipality, Port, Trust, Nationalised Banks, Life Insurance Corporation of India, etc. share accommodation allotted to another Government servant house rent allowance will be admissible to only one of them, at their choice.

The terms "accommodation" includes the accommodation allotted to the employees of State Governments, autonomous public undertaking, semi-government organisation, such as Municipality, Port Trust, etc."

4. Rule 9 provides that every Government servant shall furnish along with his first claim for House Rent Allowance, a certificate in the form given in Annexure II, III-A, III-B or III-C, whichever is applicable in his case. Rule 9(b) provides that non-gazetted officer shall furnish the requisite certificate to their Head of Offices.

5. In the writ petition, the petitioners have not averred that while raising a claim for payment of House Rent Allowance they furnished the certificate as stipulated in Rule 9(b). The entire claim of the petitioners is based on orders passed by this Court in W.P.(S) No. 4953 of 2003, W.P.(S) No. 6903 of 2002 and W.P.(S) No. 703 of 2009.

6. In the counter-affidavit, respondents have taken a stand that the houses allotted to the petitioners were provided by the Government through TISCO under a special arrangement, i.e. on recommendation of the Deputy Commissioner. Letter dated 25.07.2008 discloses that such arrangements have been made with M/s Tata Steel Limited and M/s Bokaro Steel Plant under which the State Government employees have been provided accommodation by M/s Tata Steel Limited and M/s Bokaro Steel Plant, on payment of rent directly by the occupants. The State Government has taken a stand that the petitioners, in the aforesaid facts, are not entitled for payment of House Rent Allowances.

7. Admittedly, no agreement has been executed by the petitioners with M/s Tata Steel Limited and they have been occupying the houses of M/s Tata Steel Limited, on recommendation of the Deputy Commissioner. There is no privity of contract between the petitioners and M/s Tata Steel Limited. The petitioners are not tenant of M/s Tata Steel Limited. These issues were not adjudicated in the previous proceedings.

8. Considering the aforesaid facts, I respectfully differ from the orders passed by this Court in W.P.(S) No. 4953 of 2003, W.P.(S) No. 6903 of 2002 and W.P.(S) No. 703 of 2009, on which the petitioners have relied.

9. Let the matter be placed before a Hon"ble Division Bench of this Court.