(2018) 11 JH CK 0007

In the Jharkhand High Court

Case No : Writ Petition (S) No. 150 Of 2014

Akhil Jharkhand Prathmik Shikshak Sangh @APPELLANT@Hash State of Jharkhand

Date of Decision : 05-11-2018

Acts Referred:

Bihar State Employees (House Rent Allowance) Rules, 1980 — Section 4(b)(ii)
Constitution of India, 1950 — Article 226, 309

Citation : (2018) 11 JH CK 0007

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Saurav Arun, Jai Prakash, Yogesh Modi, S. Shrivastava

Final Decision : Dismissed

Judgement

,,

Pramath Patnaik, J.",,

1. In the captioned writ application, the petitioner no.2 in the individual as well as in representative capacity has sought for quashing the letter dated",,

02.02.2013 by which the respondents have issued direction upon Deputy Commissioner of Ranchi/Jamshedpur/Dhanbad that the employees whose,,

offices situated within 8 K.M of the periphery of municipal limits of classified town, their rate of house rent allowance will be paid as fixed for",,

unclassified place according to Claus-15(D) of memo dated 28.02.2009 issued by Finance Department, ignoring the resolution taken by the Finance",,

Department vide memo dated 29.06.2010 that the rest of all terms & conditions of House Rent Allowance Rules, 1980 (including Rule 4(b)(ii) as",,

provided in memo No.660 dated 28.02.1999) shall remain same. Further prayer has been made to direct upon the respondents not to adopt pick and,,

choose method for payment of house rent allowance and to apply uniform policy of house rent allowance to members of the petitioner no.1 in general,,

and petitioner no.2 in particular at the rate of 20% which is being paid to others.,,

2. The petitioner no.1 is registered Sangh and petitioner no.2 is organizing Secretary (Sangathan Maha Mantree) of the Sangh working as Assistant,,

Teacher who spouses in common clause on behalf of Sangh and on his own behalf. The erstwhile State of Bihar, Finance Department on 13.06.1980",,

framed rule namely, The Bihar State Employees (House Rent Allowance) Rules, 1980. It has been stated that the Government of Bihar has followed",,

the similar provisions made by the Government of India so far as payment of house rent allowance of the employees are concerned. In pursuance to,,

the aforesaid rule, the Finance Department, Government of Bihar vide letter dated 04.08.1984 decided to give house rent allowance who were",,

working within 8 KM from the municipal limits of the classified city. Dispute arose with regard to applicability of the rate of house rent allowance,,

which was raised by filing of the W.P.C No.819 of 2003 and which was disposed of vide order dated 07.01.2009 with a direction to the respondents to,,

take a decision. On the basis of the said order of the Honâ??ble Court, the Deputy Commissioner, Ranchi vide letter dated 03.08.2009, vide",,

Annexure-4 to the writ application issued direction for payment of house rent allowance at the rate of 20% to all employees of the Block office as,,

well as Circle Office of Ratu. The Finance Department vide resolution dated 28.02.2009 revised the pay scale of Government employee and Clause,,

15(d) of the said resolution speaks about the house rent allowance that on the basis of classification of cities/towns as applicable in the Government of,,

India will be payable. Finance Department also passed a resolution dated 29.06.2010 wherein the Government decided to make partial modification in,,

Clause 15(d) of the said resolution of Finance Department dated 28.02.2009 to the effect that in place of municipal area substituted by â??Yâ?? as,,

classified town according to list of Ranchi, Dhanbad and Jamshedpur the same will be paid to the classification of town with effect from 01.09.2008",,

and clarified that rest all terms & conditions of the House Rent Allowance Rules, 1980 (including Rule 4(b)(ii) as well as the terms and conditions",,

provided in memo dated 28.02.1999 will remain same/unchanged.,,

The Deputy Commissioner, Ranchi vide letter dated 25.10.2012 sought for clarification from the Finance Department and the Finance Department",, vide letter dated 02.02.2013 clarified that note-2 of Rule 4(b)(ii) of the Bihar State Employees (House Rent Allowance) Rules, 1980 is not applicable",,

to those offices whose house rent allowance are admissible under any other rules. It has further been observed that when the rule came into force at,,

that time house rent allowance was payable to the city of category A, B-1, B-2 & C and it was not admissible to those employees working beyond the",,

said category and that is why note-2 of Rule 4(b)(ii) was not given effect to for those employees who were working in the offices situated within 8,,

Km from municipal area but in the year, 1986 situation changed when the Finance Department vide memo dated 24.12.1986 amended the said rule",,

and enhanced the house rent allowance as fixed for unclassified places and further referred the resolution dated 08.09.1987 in which it was said that,,

unclassified place is not only mean town/city, it means rural area also. It has further been observed that in view of above two notifications, rate of",,

house rent allowance for the employees working in the offices situated within 8 Km is automatically fixed and lastly, observed that those employees in",,

such offices which are situated within periphery of 8 Km, the house rent allowance at the rate of unclassified city is applicable as fixed in Clause",,

15(d) of the memo dated 28.02.2009 issued by the Finance Department as evident from Annexure-10 to the writ application.,,

Being aggrieved by the said letter dated 02.02.2013, the petitioners represented vide Annexure-11 series to the writ application. It has further been",,

submitted that the employees of the State of Bihar are getting house rent allowance in terms of Rule 4(b)(ii) at the same rate as applicable to,,

classified city. In case of State of Jharkhand, the employees are entitled to the rate as applicable to unclassified city which is discriminatory in nature.",,

It has further been averred that Bihar State Employees (House Rent Allowance) Rules, 1980 which has been made by the Government in exercise of",,

powers conferred under Article 309 of the Constitution of India and the said provision cannot be changed by any executive order/letter as has been,,

done by letter dated 02.02.2013 which is liable to be quashed. It has further been submitted that the respondent authority without giving opportunity of,,

show cause vide letter dated 02.02.2013 stopped the payment of house rent allowance at the rate of 20% and the Government has acted in a very,,

arbitrary manner in not extending the benefit of house rent allowance and transport allowance as the rate applicable for employees working in,, classified area with those of the employees working in the offices situated within 8 Km from the municipal area. Being aggrieved by the impugned,,

letter dated 02.02.2013, the Akhil Jharkhand Parathmik Shikshak Sangh in its meeting dated 15.12.2013 took a decision for challenging the aforesaid",,

order by filing the present writ application under Article 226 of the Constitution of India.,,

3. Learned counsel for the petitioner has canvassed his arguments by submitting that the executive order/letter dated 02.02.2013 appears to have,,

overriding effect for the Bihar State Employees (House Rent Allowance) Rules, 1980 which has been promulgated under Article 309 of the",,

Constitution of India and the Rule-4(b)(ii) interalia provides for grant of House Rent Allowance to the Government servants whose place of duties is in,,

the proximity of a qualified city. Learned counsel for the petitioner further submits that interpretation given in letter dated 02.02.2013 is not legally,,

tenable since the Central Government is paying House Rent Allowance at the same rate which is applicable for employee working in the classified,,

city and the employees who are working within 8 KM from the municipal area. Learned counsel for the petitioner further submits that the respondents,,

seems to have misconstrued the Clause-15(d) of resolution dated 28.02.2009 vide Annexure-6 to the writ application and Clause-15(d) of resolution,,

clearly speaks that House Rent Allowance would be applicable to the State Government Employees. Learned counsel for the petitioner further,,

submits that the action of the respondent by issuing letter dated 02.02.2013 smacks of illegality and malafide exercise of power without affording any,,

opportunity of show-cause. Learned counsel for the petitioner to strengthen his argument has referred to the decision (2001) 5 SCC 482 (Dr. Rajinder,,

Singh Vs. State of Punjab And Others) at paragraph-7, (2003) 8 SCC 204 (Punit Rai Vs. Dinesh Chaudhary) at paragraph-45, (2003) 4 SCC 289",,

(Federation of Railway Officers Association And Others Vs. Union of India) at paragraph-12.,,

4. A counter-affidavit has been filed by the respondent no.2 repelling the contentions raised in the writ application. In the counter-affidavit, it has been",,

submitted that in terms of objection of the Accountant General, Jharkhand, Ranchi, the Department of Finance issued the impugned letter making it",,

clear that the employees whose offices are situated in the periphery 8 KM of classified cities shall be paid House Rent Allowance as per Clause-15(d),, of Finance Department Resolution dated 28.02.2009 fixed for class â??Câ?? and unclassified place. The basic reason behind the issuance of letter,,

dated 02.02.2013 issued by the Department of Finance is that as per Rule-4(b) (ii) of the Bihar State Employee (House Rent Allowance) Rules, 1980,",,

Government Servant having place of duty within 8 KM of the periphery of municipal limits of qualified city was also granted House Rent Allowance,,

admissible for that city if they had to reside in the qualified city for want of accommodation near the place of their duty. Note-2 of appended Rule-4(b),,

(ii) clarifies that Rule-4(b)(ii) will not apply to establish entitlement to House Rent Allowance under any other provision of the rule or other general or,,

special order. It has further been submitted that in the year 1980 when the said rule came into force, House Rent Allowance was not admissible for",,

other places except A, B-1, B-2 and C Class towns. Later on situation changed in the year 1986, when House Rent Allowance was made admissible",,

Revised classification

ofÂ citiesÂ AndÂ towns

on population criteria","Revised classification

of cities/ towns

revised classification

of","RatesÂ ofÂ HRAÂ as

percentageÂ ofÂ pay

in the pay Band +

Grade pay

50 lakhs & above,"X

(earlier classified as

A-1)",30%

50-5 Lakhs,"Y

(Earlier classified as

A, B-1 & B-2)",20%

Below 5 lakhs,"(earlier classified as

C and unclassified)",10%

