(1992) 03 DEL CK 0012

In the Delhi High Court

Case No : Civil Writ Petition No. 2850 of 1981

Bal Krishan and Others APPELLANT

Vs

Kendriya Vidyalya Sangathan and Others RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 48 DLT 1 : (1992) 22 DRJ 510

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : N.B. Sinha, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition is directed against the respondents for grant of House Rent Allowance at the rate applicable to the Central Government Employees working at Ghaziabad,U.P.

(2) The petitioners are the regular employees of the Kendriya Vidyalya Sangathan and are presently working in Central School, Hindon,Ghaziabad. On January 29,1967 vide their letter No. 12(9)/67/1/D (F4), Government of India, Ministry of defense, New Delhi, issued order conveying the sanction to various facilities, to be provided by the Ministry of defense to the Central Schools Societies under the Central Schools Scheme of respondent no.3. Amongst other facilities, the employees of such schools are to be allotted residential accommodation. The petitioners are not enjoying the benefits of Government accommodation, due to the paucity of the Government quarters. The Petitioners have been working in Hindon. The salaries of Central Schools as well as the allowances to their employees are met by respondent no.2 through respondent no. 1. Respondent no.3 has the authority and control over the policies and administration of respondent no. 1. The present dispute is confined to the award of House Rent Allowance . The petitioners were given House Rent Allowance and

compensatory city allowance at the Ghaziabad rates, as applicable to the Central Government employees working in Ghaziabad. Subsequently, in 1979, respondent no.2 as a special case, gave the two allowances at the Delhi rate to the Central Government employees working at Ghaziabad, but refused to give the same relief to the petitioners in this regard. However, till 1979, in terms of the circular No. F.21-49/70-KVS(SP) dated August 18, 1971, the petitioners as residents of Ghaziabad, were getting the House Rent Allowance and Compensatory City Allowance, at the rate at which the Central Government employees, working at Ghaziabad, were getting. On June 6, 1974, respondent no.2 implemented the recommendations of the Third Pay Commission. The important aspect of the circular of 1974 was that the Compensatory (City) Allowance was given according to the place of work.

(3) Respondent no.2 promulgated an order of March 17,1979, vide their O.M. No.11014/1/E.II(B)/79, specifying the orders where the House Rent Allowance was admissible. Two facts that emerge from the O.M. of March 17,1979, are reproduced as follows:

"PARA3(a)(i) wherein it is laid down that the limits of the locality within which the order shall apply, shall be those of the named Municipality or Corporation and shall include such of the Subarban Municipalities notified area or Cantonments as are contiguous .to the named municipality or Corporation or other areas as the Central Government may from time to time notify. And Para 3(b)(i) A Government servant whose place of duty falls within the qualifying limits of a City shall be eligible for both the Compensatory (City) Allowance and House Rent Allowance irrespective of whether his place of residence is within such limits or outside."

(4) On May 26, 1979, vide letter No. 11023/9/E.II/78, respondent no.2 promulgated an order, whereby the Central Government employees, whose place of duty was in Ghaziabad, shall be paid House Rent Allowance and Compensatory City Allowance, at the rate applicable to Delhi. The petitioners have contended that the Central School,Hindon, Ghaziabad, was situated inside the boundary of the Indian Air Force Station, Hindon, near Mohan Nagar,Ghaziabad and was a defense area. The limits of Ghaziabad Municipality extend all around the Hindon Airport, but the small pocket of the Air Field where the school is situated, has been kept out from the local limits of Ghaziabad Municipality. The petitioners have contended that for all practical purposes, the Central School, Hindon, Ghaziabad, lies within the local limits of Ghaziabad Municipality and the certificate issued by the District Magistrate, Ghaziabad, to the effect, has been filed along with the writ petition. The said certificate reads as follows:

"IT is certified that Hindon Air Field Ghaziabad is within 8 Kms. of the boundaries of City Board,Ghaziabad. It is wholly dependent for the essential supplies like Cereals, Milk, vegetables, all are supplied from Ghaziabad City (Municipality) The above certificate has been issued on the basis of an enquiry done by the Tehsildar, Ghaziabad vide his enquiry dated 25.1.1980."

(5) The respondents have filed counter affidavit to the writ petition and the main ground, which they have taken, is that the school at Hindon is outside the limits of Ghaziabad municipality and is inside the boundary of Indian Air Force based at Hindon. It is further reiterated in the affidavit that it is immaterial, whether, petitioners live within the physical limits of Ghaziabad District and that the House Rent Allowance and C.C.A. are given in respect to the place of work and not in relation to the place of residence. Therefore, the petitioners were held not entitled to the grant of House Rent Allowance and C.C.A. at Delhi rates because their place of work was not at Ghaziabad but at Hindon.

(6) Learned counsel for the petitioners has contended that the petitioners have been working at Hindon, which is in close proximity to the town of Ghaziabad and there is no reason to deny them the House Rent Allowance , as applicable to the Central Government employees, working at Ghaziabad. He has further referred to the amended writ petition, wherein, he has submitted that the Central Schools at Noida and Kamla Nehru Nagar, in the District Ghaziabad, are being paid the House Rent Allowance and C.C.A. to their staff at Delhi rate. The members of the staff in these two Institutions are similarly placed, as the petitioners and the jobs are also inter-se transferable.

(7) The next contention, which has been urged, is that the respondents have now issued ''memorandum No. F. 134-5/79- 80/KVS/Budget dated February 4, 1987, whereas, the relief as claimed in the present writ petition, has been granted with effect from the date of issue of the memorandum. Reference may be made to the following paragraph of this memorandum:

"THE undersigned is directed to say that orders were issued in this Ministry''s O.M. No.1l023/9/E.II(B)/78 dt. 26.5.79 for grant of House Rent Allowance and Compensatory (City) Allowance at the rates applicable to Delhi to the Central Government employee whose place of duty is within the Ghaziabad municipality, as a special case.The question of grant of House Rent Allowance and Compensatory (City) Allowance at Delhi rates to Central Government employees working at Air Force Station Hindon which is surrounded by Ghaziabad municipal limits has been under consideration of the Government.The President is pleased to decide, as a special case, that the Central Govt. employees belonging to Groups B, and D categories working at Air Force Station, Hindon, shall be allowed House Rent Allowance and Compensatory (City) Allowance at the revised rates applicable to Delhi vide this Ministry''s O.M. No. 11013/2/86-E.II(B) dated 23.9.1986 circulated vide this Ministry''s O.M.No.19050/15/86-E.IV dated 29.9.86. The admissibility of House Rent Allowance and Compensatory (City) Allowance in terms of these orders shall be subject to the same terms and conditions as laid down in this Ministry''s O.M.No.F.2(37)/E.II(B)/64 dated 27.11.65, as amended from time to time including the modifications stipulated in the O.M. dated 23.9.1986 referred to above.

2.Central Govt. employees belonging to Group ''A'' category having their place of duty at A.F.S. Hindon shall be granted House Rent Allowance and Compensatory

(City) Allowance at the same rates and on the same terms and conditions as are applicable to Delhi prior to the recommendations of the 4th Pay Commission until further orders."

(8) The relief, Therefore, as claimed by the petitioners in the present petition has already been granted by the respondents and the only prayer, which is now made by learned counsel for the petitioner, is that the House Rent Allowance, as admissible to the Central Government employees working in Ghaziabad should be given to the petitioners w.e.f. May 1979 to December, 1986, as they have been wrongly deprived of the same in respect of this period.

(9) The denial of the House Rent Allowance only on the ground that Hindon is outside the municipal limits of Ghaziabad and, Therefore, the petitioners cannot be deemed to be working in the town of Ghaziabad and, as such, are not entitled to the House Rent Allowance as admissible to the Central Government employees is misconceived. The contention of the learned counsel for the petitioners has force that non grant of such allowance by the respondents simply because the petitioners are working in Hindon, which is a protected Air Force base and has been specifically kept out of the municipal limits of Ghaziabad,is unsustainable. The impugned action is arbitrary, discriminatory and vocative of Article 14 of the Constitution of India.

(10) The counter affidavit, filed by the respondents, only refers to the contention that the petitioners were not entitled to the grant of House Rent Allowance at Delhi rate, because their place of work was not at Ghaziabad but at Hindon. There is no force in this averment, as Hindon is in fact part of Ghaziabad. It is also reiterated by the certificate of the Additional District Magistrate, East Ghaziabad dated February Ii, 1980, wherein it has been specifically mentioned that Hindon Air Field, Ghaziabad is within 8 Kms. of the boundaries of City board and is wholly dependent for the essential supplies from Ghaziabad City (Municipality). The respondents also have now granted the necessary relief to the employees working at Hindon by a notification of February 4, 1987, which has already been reproduced above. It is stated in this notification that Air Force Station, Hindon, is surrounded by Ghaziabad Municipal limits. The present petition, relates to the earlier period from 1979 to 1986 and there is no ground to deny the petitioners House Rent Allowance at Delhi rates.

(11) The petition, as a consequence, is allowed and the Rule is made absolute. The respondents are directed to pay the House Rent Allowance to the petitioners, as payable to the Central Government employees, working in Ghaziabad, as applicable to Delhi, from the period May 1979 to December, 1986, and any amount already paid towards this allowance shall be adjusted by the revised payment of House Rent Allowance, within three months from today. The petitioners shall also be entitled to costs of this petition, which are quantified at Rs.3,000.00 .

