

(2011) 12 GUJ CK 0054

In the Gujarat High Court

Case No : Special Civil Application No. 235 of 2003

Bharat R. Shah and others

APPELLANT

Vs

State of Gujarat and others

RESPONDENT

Date of Decision : 02-12-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309

Citation : (2011) 12 GUJ CK 0054

Hon'ble Judges : Anant S. Dave, J

Bench : Single Bench

Advocate : Bharat R. Shah, Party in Person, for the Appellant; Jirga Jhaveri, AGP, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice Anant S. Dave

1. In this petition under Article 226 of the Constitution of India, the petitioners have challenged the action of the respondents in recovery of HRA/CCA for the period from 1.4.1986 to 31.8.1997.

2. According to the petitioners, as per the Resolution dated 15.12.1975 issued by the Finance Department, Government of Gujarat, certain conditions were stipulated for drawl of HRA and a government servant whose place of duty is in the proximity of a qualified city and in view of necessity have to reside within the city, was to be granted HRA admissible in that city provided that the distance between the place of duty and the periphery of the municipal limits of the qualified cities does not exceed 8 k.m. By another resolution dated 29.5.1981, benefits were extended to the employees of nearby town, namely, Bajwa (Baroda). Such benefits were continued by resolution dated 5.2.1982 and the employees working at Padra, a nearby town, were also conferred the benefits of HRA/CCA, but, upon revision of HRA/CCA, on introduction of revised scale of pay under the Gujarat Civil Services (Revision of Pay) Rules, 1987 with effect from

1.1.1986, certain modifications were ordered. Even the Vadodara Urban Development Authority also issued a communication on 19.6.1985 specifying that Padra town is included in the Urban Development Authority. However, by the impugned order, recovery of HRA was initiated on the ground that Padra was not a qualified city and the petitioners were not entitled to receive such HRA. According to the petitioners, discontinuance of HRA after period of about more than 20 years is illegal and, in no circumstances, recovery could have been ordered and further the action of non-payment of gratuity on account of recovery of HRA, etc. is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

3. Dr. Bharat R. Shah, party-in-person, has placed reliance on various decisions of this Court and the Apex Court in support of the submission that payment made to the employee by the employer even by applying incorrect rule or mistaken belief of law or by practice, cannot be recovered.

[i] C.A.V. Judgment dated 9.4.1996 passed in Special Civil Application Nos. 2272 of 1995 and allied matters;

[ii] Sahib Ram Vs. State of Haryana and Others,

[iii] Punjab State Electricity Board and Another Vs. V.N. Sharma,

[iv] 1994 (2) 2 SCC 521

[v] Board of School Education, Haryana Vs. Arun Rathi and others,

[vi] AIR 2001 SC 581

[vii] Sea Pearl Industries and Others etc Vs. Commissioner of Income Tax, Cochin,

It is, therefore, submitted that withholding of gratuity of the petitioners is illegal, unlawful and deserves to be quashed and set aside.

4. Learned AGP appearing for the respondents has placed reliance on the affidavit-in-reply filed by the Treasury Officer and submitted that, admittedly, the petitioners were not serving in the City of Vadodara and after the recommendations of Third Pay Commission came into force with effect from 1.1.1986, as per G.R. No.1.6.1987, and the classification of status for the purpose of HRA/CCA was revised and Padra town was not included in the category of city and, therefore, the impugned orders cannot be said to be unreasonable, arbitrary or illegal warranting interference of this Court in exercise of power under Article 226 of the Constitution of India.

5. Having heard the party-in-person and the learned AGP, according to this Court, the issue and the subject matter is no more res-integra. In the case of Syed Abdul Qadir and Others v. State of Bihar and Others reported in AIR 2009 SCW 1871, the Apex Court, while considering the case under Fundamental Rules - Rule 20 and Rule 20(c) and Article 309 of the Constitution of India, in Paragraph, 28 held as under :-

Undoubtedly, the excess amount that has been paid to the appellants-teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellants-teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellants-teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellants-teachers should be made.

6. In view of the law on the subject as held by the Apex Court in the case of Syed Abdul Qadir (*supra*), I am of the considered opinion that the impugned order on the basis of which the recovery is sought for from the petitioners in respect of HRA/CCA is illegal. I am, therefore, inclined to allow the present petition to the extent of directing the respondents not to implement or effect recovery of dues of HRA/CCA from the petitioners and, if the amount of gratuity is withheld on account of outstanding dues of recovery of HRA/CCA, the same shall be released within eight weeks from the date of receipt of this order. Rule is made absolute with no order as to costs.