

(2015) 08 AHC CK 0009

In the Allahabad High Court

Case No : Public Interest Litigation (PIL) No. 29913 of 2015

Bhim Singh Sagar

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Citation : (2015) 7 ADJ 428 : (2016) 114 ALR 24 : (2015) 4 UPLBEC 2792

Hon'ble Judges : D.Y. Chandrachud, C.J.;Yashwant Varma, J

Bench : Division Bench

Advocate : Sujeet Kumar and Chhaya Gupta, for the Appellant; R.B. Yadav, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Invoking the jurisdiction in a PIL, the petitioner has challenged the legality of a Government Order dated 11 February 2015 regulating the payment of house rent allowance where both the spouses are employees of the State and are residing together in one accommodation either owned or rented. Prior to the issuance of the Government Order, there were earlier Government Orders dated 15 December 1981, 28 February 1984 and 28 April 2000 which stipulated that where both the spouses are employees of the State and reside together in one accommodation, house rent allowance would be allowable to one of the spouses. This regime has now been altered by the Government Order dated 11 February 2015 which stipulates that though both the spouses may be residing together in the same accommodation, each of them would be entitled to the payment of house rent allowance as allowable to them under their respective entitlements in service. This was sought to be challenged by the petitioner on the ground that it imposes a heavy burden on the State exchequer. The second prayer by the petitioner in these proceedings is for a direction to the State to effect recoveries from its employees for the period prior to 11 February 2015 where the house rent allowance was claimed by both the spouses who are employees of the State and reside in the same accommodation.

2. In response to the petition, a counter-affidavit has been filed by the Principal Secretary, Finance to explain the genesis of the Government Order dated 11 February 2015. Employees of the Union Government who are engaged in an All India Service are governed by the All India Services (House Rent Allowance) Rules, 1977. On 8 November 1988, the Union Government in the Ministry of Finance issued an office memorandum clarifying the position in regard to whether house rent allowance would be allowable where both the spouses are in an All India Service under the Union Government and reside in the same accommodation. A policy decision was taken by the Union Government that no restriction should be imposed on the claim of the normal house rent allowance by each of the spouses who happens to be a member of an All India Service merely because they reside together in the same accommodation. The memorandum, insofar as is material is extracted hereinbelow:

"Subject : Drawal of House Rent Allowance by husband and wife when both of them happen to be Government servants and are living in hired/owned accommodation-Clarification regarding.

The undersigned is directed to say that pursuant to revision of rates of HRA on the basis of recommendations of the 4th Pay Commission clarifications were being sought from this Ministry by Ministry of Railways etc. regarding admissibility of house rent allowance to husband and wife when both of them happen to be Government servants. After having the matter considered in consultation with Staff Side of the National Council (JCM) the President is pleased to decide that no restriction should be imposed only on the ground that husband/wife is also a Government servant and is living together in the hired/owned accommodation. In such cases normal amount of HRA may be granted to them as per their entitlement subject to fulfillment of other conditions for drawal of the allowance.

2. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, these orders issue after consultation with the Comptroller and Auditor General of India."

3. Though the Union Government had taken this policy decision on 8 November 1988, the State Government took a rather long period of time to decide upon the admissibility of house rent allowance to both spouses when they happen to be Government servants and are living together in hired or, as the case may be, owned accommodation. On 7 March 1996, the State Government issued an office memorandum clarifying that where both spouses are officers of an All India Service but are deputed to the State Government, each of them would be entitled to their normal HRA as allowable under Rules though they may be residing in the same accommodation. The rationale for this was explained in paragraph-4 of the memorandum. It appears that in a situation where official accommodation was not provided, the State was liable to pay at a higher rate over and above the house rent allowance and it was, therefore, clarified that while both spouses would be entitled to HRA under each of their applicable

entitlements, the additional amount would not be paid. This office memorandum of the State Government dated 7 March 1996 governed employees of All India Services who are deputed to the service of the State.

4. Ultimately, the State Government has now taken a policy decision which is reflected in its circular dated 11 February 2015 to govern the employees of the State Government. The circular now clarifies that while both the spouses may be residing together in the same accommodation, owned or rented, each of them would be entitled to payment of house rent allowance as allowable under their Service Rules.

5. These are evidently matters of financial policy. If each of the spouses who is an employee of the State is posted to a different location, it cannot be denied that both would be entitled to the payment of house rent allowance subject to compliance with other requirements. The State Government has now taken a policy decision that spouses who are posted together and are living in one and in the same accommodation should not be deprived of the normal HRA allowable to each of them.

6. We see no reason to intervene in such a determination. There is no illegality in making such a determination. Spouses who are posted together and where both are employed in the service of the State should not be placed at a comparative disadvantage merely because both of them are employees of the State and being married, reside together in one accommodation. Whether both the spouses should be entitled to HRA or otherwise is a pure matter of financial policy. As the Principal Secretary, Finance has clarified, the State Government does consider genuine demands of employees raised from time to time subject to the requirement of meeting the expenditure from the exchequer. The fact that a demand is in conformity with a decision which has already been taken by the Union Government in respect of Central Government employees could have weighed with the State Government in taking a similar decision applicable to the employees of the State. Hence, we find no illegality in that decision.

7. The second relief which has been claimed is in regard to recoveries to be made from those employees of the State who, prior to 11 February 2015, wrongly claimed house rent allowance on account of the service of both the spouses, each of them being employed in the State service. The issue is whether the Court in a PIL should intervene in what is essentially a service matter. The basic principle is that matters relating to recoveries are governed by service conditions. The service conditions will define whether and if so, when and under what manner, recoveries should be made.

8. Bearing in mind the well-settled principles of law laid down by the Supreme Court, we are of the view that in a PIL raising a service dispute, which prayer clause (ii) would raise, the Court should not issue any such direction. This will of course not preclude the State from seeking recourse to its rights and remedies in accordance with law on which we make no observation particularly in the

absence of any affected employee before the Court.

9. For these reasons and having considered the matter in its perspective, we find no reason to entertain the petition. The petition is, accordingly, dismissed. There shall be no order as to costs.