

(2014) 08 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : S.W.P. No. 1396 Of 2012 and C.M.A. No. 2148 Of 2012

Bindu Bala

APPELLANT

Vs

State of J & K and Others

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Citation : (2014) 4 JKJ 573 : (2015) LabIC 920

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : A.M. Malik, Advocates for the Appellant; Gagan Basotra, Sr. A.A.G, Advocates for the Respondent

Judgement

Tashi Rabstan, J.—Through the medium of this petition, the petitioner is seeking quashment of Order No. 67 of 2009 dated 28.04.2009

whereby respondent No. 6 has ordered recovery to the tune of Rs. 1,01,000/- (Rupees one lac and one thousand only) on account of alleged

irregular payment of HRA for the period 05/2005 to 11/2008, Order No. 163 of 2012 dated 20.04.2012 along with relieving Order No.

Estt/CID Cell/reliev-2012/1345 dated 28.04.2012 whereby the petitioner was transferred from CID Cell, New Delhi to CID (SB) Jammu and

PHQ J&K, Srinagar Order No. 2065 of 2012 dated 31.05.2012 in so far as it relates to the petitioner whereby she has further been transferred

from CID to Armed Zone, Srinagar and with a further direction to the respondents not to effect further recovery from the salary of the petitioner on

the grounds taken in the writ petition. The case of the petitioner, in brief, is that the petitioner was posted in CID Cell, New Delhi in the year 1997

whereas her husband was already working with Principal Resident Commissioner, New Delhi since April 1996. It is contended that while residing

together since 1997, differences erupted between the petitioner and her husband in the month of April, 2005 and petitioner started living separately

along with her children in a rented accommodation at C-3 H. No. 99, Adarsh Colony, Aya Nagar, New Delhi and resided there upto November

2008 and thereafter the petitioner reconciled with her husband and again started residing with her husband in his official accommodation.

2. It is contended by learned counsel for the petitioner that respondent No. 6 vide Order No. 67 of 2009 dated 28.04.2009 directed for recovery

of an amount of Rs. 1,01,000 (Rupees one lac and one thousand only) on account of irregular payment of HRA for the period 05/2005 to

11/2008 as pointed out by the Additional Accountant General (Audit AG), J&K, Jammu and it was directed to effect the same from the salary of

the petitioner in 34 installments @ Rs. 3000/- and last will be Rs. 2000/- per month. On this, the petitioner represented the respondents, but,

despite that respondents deducted an amount of Rs. 3000/- from the salary of the petitioner for the month of April, 2009. In this regard, the

petitioner again requested respondents 4 and 6 to settle her HRA case. In the meantime, she has been transferred vide Order No. 163 of 2012

dated 20.04.2012 to J&K CID (Special Branch), Jammu from CID, New Delhi and accordingly she was forced to join at Jammu. It is further

contended that she was again transferred to Armed Zone, Srinagar vide PHQ Order No. 2065 of 2012 dated 31.05.2012. Hence, this petition

seeking quashment of orders dated 28.04.2009, 20.04.2012 and 31.05.2012 on the following grounds:--

(i) That from May 2005 to November, 2008 the petitioner was residing separately due to strained relations with her husband, but the respondents

vide order dated 28.04.2009 directed recovery of HRA to which the petitioner moved representation and on the basis of said representation an

enquiry was conducted and report submitted wherein it is contended that legal opinion may kindly be extended whether the HRA claim made by

the petitioner is under rules or otherwise. Instead of doing so, respondent vide order dated 20.04.2012 transferred the petitioner from CID Cell,

New Delhi to Jammu and thereafter vide PHQ order dated 31.05.2012 she was again transferred to Armed Zone, Srinagar. It is contended that

this action of the respondents is illegal and arbitrary therefore, respondents be directed not to make any recovery from the petitioner and also

reconsider her case for her posting to J&K CID Cell, New Delhi.

(ii) That transfer of the petitioner allegedly offends the transfer policy notified vide Govt. Order No. 861-GAD of 2010 dated 28.07.2010 wherein

it is provided that where both the husband and wife are in Government Service, they may be posted conveniently so far as possible subject to

availability of the post and keeping in view the interest of the administration as well. It is also contended in the said policy that minimum tenure of a

Government employee on a post shall be two years and maximum of three years, but, in the present case, the petitioner was firstly transferred from

New Delhi to Jammu on 20.04.2012 and thereafter vide order dated 31.05.2012 from Jammu to Srinagar, which action of the respondents is in

violation of the aforesaid transfer policy.

3. Respondents have filed objections contending therein that transfer and postings are part and parcel of Government service and are being

ordered in the interest of administration and also in exigency of the services of the Department. The petitioner has served in New Delhi at one

place, for the last 'fifteen years', hence, cannot claim her further stay as a matter of right. The petitioner and her husband were residing together in

Govt. Quarter No. 24, JK House, 5-Prithvi Raj Road, New Delhi and never remained under separation. This fact has been corroborated by the

respondents as the petitioner had applied for a mobile in September/October, 2005 in the office of MTNL, New Delhi on the address and also

applied for PAN Card before the Income Tax Department in November/December, 2006 and got the same bearing No. ALSPB 0779L.

Therefore, the petitioner just to frustrate the relevant HRA Rules has manipulated that she remained separated from her husband at C-3, House

No. 99, Adarsh Colony, Aya Nagar, New Delhi from April 2005. Controverting the plea of petitioner to allow her HRA, respondents have

reproduced Schedule XXII of CSR to bank on it to abide by the objection raised by Audit Party of Accountant General Office, who is expert in it

to function on its own, under Rules.

4. Heard learned counsel for the parties and perused the record.

5. In the instant case two fold prayer is made; one regarding quashment of transfer orders dated 20.04.2012 and 31.05.2012 and second for

quashment of order dated 28.04.2012 by virtue of which recovery of Rs.

1,01,000/- (Rupees one lac and one thousand only) has been ordered.

6. In so far as prayer with regard to quashment of orders dated 20.04.2012 and 31.05.2012 is concerned, the same has been rendered

infructuous on the ground that in pursuance of said orders, the petitioner has joined her place of posting and, accordingly, writ petition to that

extent has become infructuous.

7. Now, the writ petition survives only to the extent of order dated 28.04.2009, in terms whereof, recovery for an amount of Rs. 1,01,000/- from

the petitioner has been ordered on account of HRA for the period May 2005 to November, 2008. Respondents have contended that the

petitioner and her husband were residing together in Govt. Quarter. No. 24, JK House, 5-Prithvi Raj Road, New Delhi and never remained under

separation and this fact has been corroborated as the petitioner had applied for a mobile in September/October, 2005 in the office of MTNL,

New Delhi on the address and also applied for PAN before the Income Tax Department in November/December, 2006 and got the same bearing

No. ALSPB 0779L. The petitioner was transferred from CID New Delhi to Jammu and accordingly her pay for the month of May, 2012 was

disbursed to her as per LPC issued by CID New Delhi wherein recovery of Rs. 98,000/- is shown on account of HRA @ 3000/- per month till

liquidation, as such, SSP, SB Jammu deducted an amount of Rs. 3000/- on account of recovery of HRA from her pay drawn for the month of

May, 2012, but, the story projected by the petitioner that because of matrimonial differences with her husband she was residing separately in a

rented accommodation for the disputed period, is far away from truth and has no significance because she has failed to produce any evidence

regarding any strained relations with her husband by producing any documentary evidence like Court decree or any lis pending anywhere.

Respondents have reproduced the relevant Rule in their objections showing logically that the petitioner is not entitled for HRA as per Schedule

XXII of CSR.

8. It is profitable to reproduce the Schedule XXII of CSR as under:--

Schedule XXII.

1...to...5

(6) The grant of House Rent Allowance shall be subject to the following conditions:

(a)...to (g).....

(h) A Government Servant shall not be entitled to House Rent Allowance if:--

(I) & (II)

(III) his wife/her husband has been allotted accommodation at the same station by the Government whether he/she resides in that accommodation

or he/she resides separately in accommodation, rented by him/her;

9. A plain reading of the aforesaid Schedule clearly reveals that a Government servant shall not be entitled to the HRA if his wife/her husband has

been allotted accommodation at the same station by the Government whether he/she resides in that accommodation or he/she resides separately in

a accommodation, rented by him or her. (Emphasis supplied).

10. On the other hand, the petitioner has failed to project her case or give any documentary evidence as to whether she had brought this fact of

living separately into the notice of the higher authorities by producing any legal (Court) decree or documentary evidence much before or even after

the same was detected by the audit party. Rather it seems that she had suppressed the fact and it is after thought that she concocted the story of

living separately only to avoid the refund of the over drawn HRA. It is also brought on the record that Department had constituted a Committee for

conducting verification, which submitted its report dated 11.12.2011 contending therein that the petitioner was putting up in a rented

accommodation with her children at C-3, H. No. 99, Adarsh Colony, Aya Nagar, New Delhi. The rented accommodation where the petitioner

was putting up belonged to one Mr. Prithivi Nath (Sudan) husband of Basanti Devi, R/o B-5, J&K Guest House Chankaya Puri, New Delhi, who

also stated that petitioner was living separately along with her children and paid the rent dues regularly.

11. Even if it is presumed that the petitioner was residing separately during the period May 2005 to November 2008, it is manifestly clear that in

terms of Schedule XXII of CSR, the petitioner is not at all entitled to HRA as it specifically worded that ""....whether he/she resides in that

accommodation or he/she resides separately in accommodation rented by him/her."" Moreso, when learned counsel for the petitioner, just for

argument sake and for Court satisfaction was asked to show any proof as to whether from May 2005 to November, 2008, when allegedly there

were strained relations between the petitioner and her husband, was any lis pending before any Court of law in this regard and was there any order

from any Court, he side tracked and ultimately failed to satisfy the Court. Therefore, the plea that has been raised by the petitioner cannot be

accepted, particularly, in terms of the Rules position. Court agrees that HRA is a statutory right of any employee, but it is subject to some

restrictions, as per CSR. If the Courts accept such type of the contentions of employee(s), it may be a very possible loophole for any spouse to

make a plea that because of strained relations between them, he/she was putting up in a separate accommodation and notwithstanding the

presence of any Rule, it could have been permissible for them to claim HRA.

12. So long as the provision is there regulating the drawing of HRA, this Court has to see that it has application in full force, but, with the

restrictions prescribed. The employee was aware of his/her predicament, created by the Rule, but the challenge about its constitutionality thus

stands repelled. It has become final.

13. Justice or equity could be guiding factors for rendering a decision, but, the result should not offend the test and text of law. Personal

convictions regarding justice and fairness cannot form the basis of a judgment, especially when it results in State's largesse being distributed.

14. It is pertinent to mention here that as per Annexure-D, Senior Superintendent of Police, J&K, CID, New Delhi had written to the I.G.P., CID,

Jammu in this regard soliciting legal opinion as otherwise the audit party had rather sought for the explanation of the D.D.O. to justify the payment

of HRA. So,, it was on the insistence of a separate independent Department of Audit Accountant General to recover the undue payment with

intimation to them. It is pertinent to mention herein that this Court vide its interim order dated 11.06.2012 had allowed the petitioner to file a

representation before the competent authority for consideration, under rules and till then the recovery was stayed, but, as per the objections filed

by the State, no such liberty was exercised by the petitioner. Viewed thus, I do not find any infirmity, illegality or irregularity in the action of the

respondents to effect recovery of undue HRA as per impugned order, which is

purely based on the audit of the Accountant General's office.

Accordingly, this petition is dismissed along with connected CMA(s).