
(2003) 02 P&H CK 0267
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2462 of 2001

Dewan Chand

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 03-02-2003

Acts Referred:

Citation : (2003) 135 PLR 274

Hon'ble Judges : S.S. Nijjar, J; Hemant Gupta, J

Bench : Division Bench

Advocate : P.S. Khurana, for the Appellant; H.S. Sran, Addl. A.G., for the Respondent

Judgement

Hemant Gupta, J.—This order shall dispose of CWP Nos.2462, 3086, 7839, 7841, 10234, 11471, 16264 and 16738 of 2001 as common question of law and fact arises in these cases. The facts as mentioned hereinafter are from C.W.P, No.2462 of 2001.

2. On 31.1.1976, the State of Punjab decided to provide incentive of rent free accommodation to State Government employees posted :rs the Border areas i.e. Cit-ies/Towns/Village falling within 10 miles/16kms. belt of International Border in District Gurdaspur, Amritsar and Ferozepur. However, on 15.5.1984, it was decided by the State Government that those who are not provided with rent free accommodation be granted House Rent Allowance at the rate of 12.5% of their pay i.e. equal to the employees posted in "A" Class cities without production of actual rent receipts. The petitioners who were posted within 16 kms. border belt were getting such Border area House Rent Allowance along with other employees.

3. On 30.8.1988, the State of Punjab, on the recommendation of the Third Pay Commission, issued instructions, vide which cities/towns in the State were re-classified in Class A, B, C & D for the purpose of House Rent Allowance and different rates of House Rent Allowance to the employees according to their pay range in different class of cities/towns also notified. However, proviso in the said

instructions protected the payment of House Rent Allowance being drawn by the employees at higher rates than those specified in the instructions till their rate of House Rent Allowance get adjusted in the revised rates. Relevant provisions from the said instructions read as under:-

"(ii) The facts of house rent allowance for various pay ranges admissible in different classes of Cities/Towns shall be as under:-

Pay Range

Class-A

Class-B

Class-C

Class-D

City

City

City

City

750-1249

200

150

100

75

1250-1749

300

225

150

100

1750-2249

400

300

200

150

2250-2749

500
375
250
175
2750-3249
600
450
300
225
3250-3749
700
525
350
250
3750-4249
800
600
400
300
4250-4749
900
675
450
325
4750-5249
1000
750
500
375
5250 onwards.

However, the amount of house rent allowance being drawn by the employees at higher rates than those specified above shall be protected, till their rate of house rent allowance gets adjusted in these revised rates."

According to the case of the petitioners, in view of the proviso to the instructions dated 30.8.1988, the authorities are to protect the payment of House Rent Allowance of the petitioners. However, a sum of Rs. 400/- is being deducted per month, without any notice or opportunity of hearing, from the pay of the petitioners from September/October, 2000 even though the Supreme Court has upheld that proviso, vide order dated 25.4.1995 passed in SLP (C) 9149 of 1992.

4. In reply, the State has submitted that House Rent Allowance is not a fundamental/statutory right and cannot be claimed as a matter of right. Reliance of the petitioner on few of the judgments rendered by this Court were sought to be distinguished on the ground that those cases pertained to refund of the amount of Border House Rent Allowance where it has been recovered from the gratuity or retiral benefits of the retiree only. It is further submitted that House Rent Allowance and Border House Rent Allowance in lieu of rent free accommodation are two different and distinct allowances sanctioned/revised by separate sets of circulars and having different terms and conditions. The conditions governing one type of allowance can not be made applicable to the other type of allowance. The amount drawn by them can not be protected because they were not drawing normal House Rent Allowance drawn in lieu of rent free accommodation has not been protected under government instructions. It has also been submitted that the petitioners have wrongly drawn Border House Rent Allowance from 1.9.1988 to middle of 1992 which was not protected by the Government.

5. In C.W.P. No.8057 of 1999, learned Single Judge of this Court has found that the petitioners are entitled to the protection under the instructions dated 30.9.1988. The dispute in the said case was in respect of Border Area House Rent Allowance in lieu of rent free accommodation. This Court concluded as under:-

"Thus, in view of the interpretation of the provisions contained in the government instructions issued in the year 1988, and in view of the dicta laid down in the SLP (supra), I hold that the petitioners are entitled to the said protection and the Government had in fact wrongly initiated and made the recoveries from them. The petition is, therefore, allowed. The petitioners shall be entitled to the protection granted by virtue of the instructions of Punjab Government as contained in Annexure P-I. The respondents shall not make recoveries of house rent allowance from the petitioners and if the recovery of any amount has been made on account of house rent allowance falling within the mischief of the instructions (Annexure P-I), the respondents are directed to refund the same within three months."

6. We are in respectful agreement with the view expressed by the Learned Single

Judge in the above mentioned judgment. As per instructions dated 30.8.1988, house rent allowance being drawn by the employees at higher rate than those fixed in the said instructions was protected to be adjusted in the revised rates, The rent free accommodation in lieu of house rent allowance to the employees posted in the border area stands on the identical footing, therefore, the petitioners are also entitled to the benefit of instructions dated 30.8.1988 and they shall be entitled to the protection granted by virtue of the said instructions.

7. Learned counsel for the State further pointed out that the protection of House Rent Allowance is available to only those employees who are drawing lesser amount of House Rent allowance than what they were getting prior to 30.8.1988. It was also pointed out that if an employee is not getting any house rent allowance on account of his place of posting, then he is not entitled to the protection contemplated under such instructions.

8. The argument of the State that the protection is only in respect of house rent allowance being drawn by the employees on higher rates than specified in the instructions is justified. The amount of house rent allowance which has been drawn by the petitioners is to be protected only if such petitioners are entitled to house rent allowance in terms of instructions dated 30.8.1988.

9. However, the respondents are not entitled to recover the amount of excess house rent allowance paid to the petitioners as such amount was paid by the respondents without any fraud or misrepresentation on the part of the petitioners. The Supreme Court in *Sahib Ram v. State of Haryana*, 1995(2) R.S.J. 139 has held that the recoveries can not be effected if the amount has been paid on account of mistake of the authorities, without any fraud or misrepresentation on the part of the employees. Consequently, the respondents shall not make recoveries of excess house rent allowance paid to the petitioners.

10. The writ petitions stand disposed of in the above terms. No costs

Sd/-S.S.Nijjar,J.