
(2013) 04 DEL CK 0125

In the Delhi High Court

Case No : Writ Petition (C) No. 3535 of 1997

Dr. A.W. Sohoni

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0125

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Nitin S. Tambwekar and Mr. B.S. Sai, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by petitioner/Dr. A.W. Sohoni, who was the Chief Director of the respondent No. 2. The petitioner prays for grant of House Rent Allowance (HRA) from May, 1995 and till the same is due to him in accordance with the terms and conditions of his service. The petitioner has set up a case that he has been wrongly denied HRA because he was justified in not occupying the premises/flat which was allotted to him by the respondent No. 2-Corporation. The petitioner claims that the flat was not in accordance with the status of the petitioner, and petitioner's representation for reconsideration has been malafidely rejected by the respondent No. 2. Petitioner has relied upon office order dated 30.04.1991 to claim that the petitioner will be entitled to 30% of the basic pay as HRA. Respondent No. 2 has not filed a detailed counter-affidavit, but it filed the counter-affidavit to an affidavit of the petitioner dated 20.07.2009. In the affidavit dated 20.07.2009, petitioner claimed that three persons namely Sh. John Kurien, Director (Training), Sh. S.K. Tucker, Deputy Director (Training) and Sh. S.K. Anand, Deputy Director (Training) were given HRA, although they did not occupy the official accommodation. In response, the respondent No. 2 has stated that the respondent/Corporation undertook a project and got flats constructed from trainers in the TOPIC Institute of the respondent no. 2 at Gurgaon. It is stated that petitioner was also a trainer and

was allotted a flat along with the others, but the petitioner refused to occupy the allotted flat and, therefore, petitioner's HRA was stopped. The basic contention of the respondent No. 2 appears to be that flats constructed by it cannot remain vacant on the one hand because persons such as petitioner did not occupy them, and on the other hand, persons such as petitioner can claim HRA from the respondent No. 2. Respondent No. 2 has also denied payment of HRA to Sh. S.K. Tucker and Sh. S.K. Anand and has stated that HRA for all the three trainers, as also the petitioner was stopped by the respondent/Corporation. It is further stated in the reply affidavit of respondent No. 2 that the flats constructed by respondent-Corporation were allotted and lying vacant hence the HRA to Sh. John Kurien, Sh. S.K. Tucker and Sh. S.K. Anand was stopped, and it was on the same very principle on which HRA to the petitioner was also stopped. In the reply affidavit, it is stated that Sh. S.K. Tucker and Sh. S.K. Anand started receiving HRA from 1998, when the flats were allotted to others and were hence not lying vacant.

2. A reference to the writ petition, the other pleadings on record including the additional affidavit filed by the petitioner, the affidavit of the respondent No. 2 dated 12.11.2009 and the response of the respondent No. 2 to the RTI queries show that the following position emerges:-

(i) Respondent No. 2/employer-organization constructed flats for its trainers including the petitioner.

(ii) These flats were allotted to all the four trainers including the petitioner, who refused to occupy the same and, therefore, HRA of all the four officers namely, the petitioner, Sh. John Kurien, Sh. S.K. Tucker and Sh. S.K. Anand was stopped.

(iii) HRA of Sh. S.K. Tucker and Sh. S.K. Anand was resumed only after flats were allotted to other employees and, therefore, flats were not vacant. Same is the position with respect to Sh. John Kurien.

(iv) The principle adopted by respondent No. 2 was that till the flats were vacant, and which could be occupied by the petitioner and other employees, HRA was not paid to such persons because flats could not be allowed to remain vacant, and yet employees could claim HRA. HRA was only paid after the flats were allotted to other employees of respondent No. 2.

3. In my opinion, respondent No. 2 was perfectly justified in taking up the stand it did that flats which were constructed by it on a great cost could not lie vacant in spite of allotting them to the officers such as petitioners, and hence HRA cannot be paid.

I agree that it would be an unfair attitude of the employees not to occupy flats but claim HRA and also unnecessary monetary loss to the respondent No. 2/ Organization because what is the use of the respondent No. 2 spending huge amount of money by constructing flats and yet such flats would remain vacant on the one hand but still employees on the other hand can claim HRA by refusing to

occupy the flats.

4. Learned counsel for the petitioner could not point out to me any rule of respondent No. 2/employer-Organization or any circular issued by it that even if a person refuses to occupy the accommodation, such a person will be entitled to HRA.

5. Learned counsel for the petitioner placed reliance upon the Director, Central Plantation Crops Research Institute, Kesaragod and Others Vs. M. Purushothaman and Others, to contend that this Court should grant relief of HRA to the petitioner once the flat which was allotted to the petitioner was occupied by someone else.

6. I may note that the judgment relied upon by the petitioner, in fact, directly goes against the petitioner because in the said judgment the employees were denied the benefit of HRA because the employees refused to occupy the flats which were allotted by the employer. The employer took an action in that case on the basis of its office memorandum dated 27.11.1965 and respondent No. 2 in the present case appears to have followed similar policy/principles. Thus, the judgment cited by the petitioner infact directly goes against the petitioner for dismissal of the writ petition.

7. It is contended on behalf of the petitioner that para 9 of the judgment relied upon should be read for giving the petitioner the benefit of HRA once the flat which was allotted to the petitioner is occupied by another employee. On being asked, counsel for petitioner failed to point out to me any such case pleaded in the writ petition as to when the flat allotted to the petitioner was allotted to some other persons, and, accordingly, for which particular period petitioner can claim HRA. Since the necessary factual base is wholly absent from the pleadings of the petitioner on record, this aspect cannot be decided by this Court and no relief on that basis can be granted to the petitioner and which could have been granted only on a specific case being pleaded with respect to the dates as to when the flat allotted to the petitioner was allotted and occupied by some other employees of respondent No. 2/Organization. In view of the above, there is no merit in the petition, which is, therefore dismissed, leaving parties to bear their own costs.