
(2002) 04 MP CK 0002
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2340/99

Dr. G.K. Kundlani

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Constitution of India, 1950 — Article 141, 227

Citation : (2003) ILR (MP) 381 : (2002) 5 MPHT 148 : (2002) 4 MPLJ 451

Hon'ble Judges : S.M. Samvatsar, J; Dipak Misra, J

Bench : Division Bench

Advocate : R.D. Hundikar, for the Appellant; S.K. Yadav, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Sustainability of the order dated 4-5-1999 passed by the M.P. State Administrative Tribunal, Jabalpur (for short "the Tribunal") in O.A. No. 1590/98 has been called in question by the petitioner invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India.

The facts as have been uncurtained are that the petitioner is a State Government employee. He came on transfer to Jabalpur in the month of July, 1993. He was not allotted a Government accommodation and, therefore, he was paid house rent allowance admissible as per rules. The wife of the petitioner is an employee of the Central Government and she is obtaining the house rent allowance admissible as per rules applicable to her. The Principal, Government Ayurved College & Hospital, Jabalpur, the respondent No. 3 herein, by letter dated 27-5-1998 required the petitioner to submit details of his family members which was submitted on 1-7-1998. As the same was not accepted the petitioner sent it by registered post. Thereafter the respondent No. 3 directed the petitioner to submit whether his wife is a Government servant and is in receipt of house rent

allowance and from what date. The petitioner stated the facts in a categorical manner asseverating that his wife is a Central Government employee and getting her house rent allowance as admissible in the rules. The petitioner put forth a stand before the authority that his getting of the house rent allowance by his wife has no connection or nexus with the petitioner. Certain circulars were pressed into service. Despite the aforesaid fact situation the respondent No. 3 stopped paying the house rent allowance to the petitioner and threatened him to take coercive action for recovery of a sum amounting to Rs. 15,940/- and thereafter withheld the salary of the petitioner. Being dissatisfied the petitioner filed O.A. No. 1590/98 before the Tribunal. It was contended before the Tribunal that circulars of the State Government do not cover the field and, therefore, by making the said circulars applicable, the petitioner cannot be deprived of the house rent allowance. It is noteworthy to state before the Tribunal reliance was placed on the order passed by the Apex Court in Civil Appeal No. 56/99. The Tribunal distinguished the same and rejected the application preferred by the petitioner. Hence this writ petition at the instance of the petitioner.

A return has been filed by the answering respondents contending, inter alia, that the order passed by the Tribunal cannot be found fault with inasmuch as the facts which were before the Apex Court were relatable to the circular dated 15-6-1987, but the case of the petitioner is governed by the circular dated 18-10-1994 which adds a clarificatory note to the previous circulars.

We have heard Mr. R.D. Hundikar, learned Counsel for the petitioner and Mr. S.K. Yadav, learned Government Advocate for the State. It is urged by Mr. Hundikar that the Apex Court had interpreted the circular dated 15-6-1987 and the same being the law of the land pronounced under Article 141 of the Constitution, the Tribunal could not have distinguished the same. It is urged by him the letter dated 18-10-1994 which adds the clarificatory note to the circular dated 15-6-1987 does not take away the effect and impact of the Apex Court's decision and the same still governs the field and, therefore, the Tribunal has fallen into enormous error by distinguishing the same.

Sounding a contra note, it is proponed by Mr. S.K. Yadav, learned Government Advocate for the State that before the Apex Court the grievance of the appellant was not relatable to the fact situation which was in existence before the circular vide Annexure P-3 was issued and that apart, Their Lordships took note of the fact that the husband and wife were staying separately. The learned Government Advocate has supported the order passed by the Tribunal putting forth that the language employed in the letter-circular dated 18-10-1994 if appreciated in proper perspective, it would be plain as noon day that if the husband and wife are working under separate Governments each of them will not be entitled to the house rent allowance.

To appreciate the rival submissions raised at the Bar, we have carefully perused the order passed by the Tribunal. The Tribunal has referred to the order passed by the Division Bench at Gwalior in W.P. No. 388/98 (Smt. Kusum Devi Verma V.

State of M.P. and others) which was assailed before the Apex Court in Civil Appeal No. 56/99 and thereafter quoted the order passed by the Apex Court and in Paragraph Nos. 10 and 11 expressed the view as under:-

"10. The order at Annexure A-4 which has been reproduced above, was not brought to the notice of the Supreme Court. Annexure A-4 makes it clear that if a Government servant of the State Govt. is living in the same house with a member of the family who is an employee of Govt., Federation, Organisation, Board, Bank, Corporation, etc., then only one of them will get HRA.

The payment of HRA to, for example, a Bank employee cannot obviously be stopped on the basis of Annexure A-4. However, if a State Government employee is a member of a Bank employee's family and is living in the house, then he (the State Govt. employee) will not get the HRA. The same logic will apply if we substitute a Central Govt. employee for a bank employee, in the aforesaid example. Unfortunately the order at Annexure A-4 was not brought to the notice of the Hon'ble Supreme Court. The meaning of Annexure A-4 is clear that a State Govt. employee will not get HRA if any member of his family living with him gets HRA from any source."

We have reproduced the aforesaid paragraphs as this is the only reasoning which has been applied by the Tribunal. The hub of the matter is whether the analysis made by the Tribunal is sound, correct and proper or it suffers from any infirmity. In this context we may profitably refer to the Paragraph No. 13 of the circular dated 15-6-1987. The same reads as under:-

"13. If more than one member of a family (e.g., husband, wife, son, daughter-in-law, etc.) are Government servant and they stay in the same house whether rented or owned by one of them, the house rent allowance shall be paid to only one of them. In the case of rented house it shall be paid to the Government servant who has actually rented the house and in the case of an owned house to the Government servant who owns the house. The others shall not get the allowance. If the house is rented by the member of the family who is not a Government servant nobody shall be entitled to the house rent allowance. If the house is owned by a member of the family who is not a Government servant the house rent allowance may be claimed by any one of the family who is a Government servant.

Explanation:- When more than one member of the family who are Government servant, are residing in the same house jointly occupied by them the house rent allowance will be claimed by any one member of the family only even though there exists an implicit or explicit agreement that ownership is with reference to specific ascertained portion of the house."

The Apex Court in the case of Kusum Devi Sharma (supra) expressed the view as under:-

"Having heard Counsel we are satisfied that the High Court was in error as much

as Clause 13 of Fundamental Rule 48-A upon which he relied itself says "if more than one member of a family (e.g., husband, wife, son, daughter-in-law, etc.), are Government servants and they stay in the same house" the house rent allowance is payable to only one of them. In the first place "Government servants" in this context can only mean State Government servants. In the second place, the High Court did not take this account what is admittedly a fact namely, that the appellant was residing in a separate house from her husband and was paying the rent thereof. For both reasons, the quoted provisions in the Rule does not debar the appellant from claiming house rent allowance."

On a perusal of the aforesaid pronouncement of law there remains no trace of doubt that the Apex Court interpreted that the Government servants can only mean the State Government servants. Now the question that falls for determination is whether by addition of clarificatory note vide Annexure P-3 the essence of the dictionary clause has lost its potentiality. Relevant portion of the Annexure P-3 reads as under:-

^^,d gh ifjokj ds lnL; tks ,d gh lkFk ,d gh edku esa fuokl djrs gSa] muesa ls dksbZ ,d "kkldh; lsod gks vkSj nwljk dksbZ "kkldh;] la?k @ laLFkk @ eaMy @ cSad @ fuxe bR;kfn dk deZpkjh gks rks muesa ls fdLh ,d dks gh vkokl Hk?ks gh ik=rk gksxhA

The Tribunal has laboured hard to interpret the aforesaid clarificatory note to understand that a Central Government employee will stand on the same pedestal or on similar footing as that of a bank employee as it has been included in the circular dated 18-10-1994. We have bestowed our anxious consideration to appreciate the language which has been employed in the said circular. The circular letter postulates that if two members are residing in the same house and one is a Government servant and the other is an employee of Government, he will not be entitled to the house rent allowance. After the word "Shashkiya" which occurs in the second time in the same sentence, there is a "comma". Mr. S.K. Yadav, learned Government Advocate has given immense emphasis on this "comma" to show that this has to be read disjunctively which would make it purposive. It is submitted that the word "Shashkiya" would include the Central Government. Submission of Mr. Yadav is that the word "Shashkiya" stands in a different compartment than Sangh/ Sanstha/Mandal/Bank/Nigam, etc. At present we are not at all concerned with any Federation, Institution, Board, Bank or Corporation. We are only concerned with the fact whether the use of the word "Government" would include the "Central Government". It is urged by Mr. Yadav that when this aspect was clear in Clause 13 of the earlier circular, there was no necessity to again putforth the word "Government". The aforesaid proponement of Mr. Yadav, though looks quite attractive at the first flush, it pales into insignificance on a deeper probe. As it appears to us when two words occur in a particular sentence and there is no reason to give distinctive meaning to the same, we think it apposite to state that they should convey the same meaning. If the State Government wanted to include "the Central Government", there was

no remora or impediment to say so, but the State Government has chosen not to say so and the intendment is not clear.

Possibly the State Government wanted to reiterate that the Government as well as the employees of the other organisation are also included. The context which was interpreted by the Apex Court in the case of Kusum Devi (*supra*) still holds the field and we do not find any distinctive features to distinguish the said decision. The base or bedrock which was the foundation for the purpose of interpretation that Government means in the context only the State Government servants still holds the field. We do not find any cogent reasons to distinguish the aforesaid decision of the Apex Court solely on the basis of the circular dated 18-10-1994 which is neither clear nor an ambiguous. In fact, if we allow ourselves to say so, the term "Shashkiya" has to take colour from the word "Shashkiya" used earlier on. We have no hesitation in stating that ordinarily the word of general import has to take colour from the words with which it is associated. In absence of anything contrary, to interpret "Shashkiya" to include an employee of the Central Government, in our opinion, would be unsound and improper. Hence, we face no experience in setting aside the order passed by the Tribunal and accordingly, we quash the same.

Consequently, the writ petition is allowed and the order passed by the Tribunal is quashed and it is directed that the petitioner shall reap all the benefits and the arrears shall be computed and given to him within a period of three months from the date of receipt of the order. However, in peculiar facts and circumstances of the case, there shall be no order as to costs.