
(1996) 05 AHC CK 0030

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 38876 of 1993

Dr. Maya Rani Srivastava

APPELLANT

Vs

Director Higher Education and Others

RESPONDENT

Date of Decision : 21-05-1996

Acts Referred:

Citation : (1997) 1 UPLBEC 266

Hon'ble Judges : Ravi S. Dhavan, J;A.B. Srivastava, J

Bench : Division Bench

Advocate : Bal Krishna Narayana, for the Appellant; S. C., for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, J.—This matter before the Court of denying house rent allowance to the petitioner who is a lecturer at the Arya Kanya Degree College, an institution affiliated to the Allahabad University, in the duration of the writ petition being pending is seeing filing of several record on behalf of the State-respondents without any clear cut defence on the issue raised by The petitioner.

2. If the matter were to be seen in generality the court cannot go on interpreting the situation as and when it arises all too frequently in the matter of payment of house rent to a State employee or a compensatory allowance in the event of an accommodation not being provided or a State employee receiving a house rent allowance in consideration of living in an accommodation of his own.

3. The petitioner owns a house. It is recorded in her name. If the matter is just left here, there apparently, would be no issue amongst the State-respondents. But for the fact that the petitioner is married and her husband is in Government of India service, the contention of the State respondents is that the petitioner is not entitled to house rent allowance in lieu of the circumstance that she resided in her own house. The suggestion is that her husband also drawn a house rent allowance.

4. In matters which relate to the right of a Government servant to be allotted a Government accommodation, the rule is flexible that a State service carries with it the right to receive an accommodation which should the Government not be able to provide, then an appropriate allowance to rent out an accommodation may be provided. The two alternatives are left for being balanced between the officer and the State administration as in reality the official accommodations which may be available probably will be less in proportion to the number of officers serving. But this is one aspect of the matter.

5. If the State administration were to get rigid that it will not pay an allowance in hiring an accommodation, it will be met with equal rigidity from an officer of the State that each of them by right has to be provided with an official accommodation. The unflexibility of the two positions will play up havoc for the State administration to balance the shortage of accommodation, its allotment to officials and the matter of allowance for hiring an accommodation.

6. Better prudence would be that there should be flexibility so that neither is inconvenienced. Should there be a situation that an official accommodation may not be available for allotment to an official, an allowance which is provided by the State administration mitigates the circumstances of hiring an accommodation. If both husband and wife are in service, they can, as of right, seek an accommodation individually. But in practice this may not be possible. The Court leaves this matter at this without any further comment. But pressure of accommodation at times sees a husband and wife in State service in the same accommodation.

7. Logically, only one rent will be payable and only one officer will receive an allowance for house rent for hiring a house.

8. Then there are occasions like the present one where the husband is an officer of the Central Government and the wife is an employee, in effort, of a constituent college affiliated to the University and the allowances are the subject-matter of payment by the State. If a house rent allowance is payable, then the necessary corollary is that the recipient also has right to be allotted an accommodation in which case the allowance will not be paid. But, if the husband is in the service of the Central Government and resides in a house which is owned by his wife, then the only aspect which matters, in so far as State administration is concerned, is to deliver to the owner of the house in State service, the requisite allowance as compensation for use of the employee's house in lieu of an allotted house not being used. This compensation releases pressure on accommodation reserved for allotment.

9. This matter ought not to be complicated more than is necessary, otherwise the State administration will find more confusion from its officers claiming the right to be allotted an accommodation which the State may not be able to provide. All that the Court can say that bona fide persons in seeking allowance for the purpose of residing in their house, such as the petitioner, should not be

suspected. There is no landlord in this case who may receive two rents.

10. The two State respondents ought to, thus, clear the requisite claims of the petitioner for such allowance as she is entitled so as house rent allowance for living in her own accommodation. This may be done within a period of two months from today.

11. The petition succeeds, but learned counsel for the petitioner stated that regard being had to the circumstances, he will not press for costs.

12. Petition allowed. No order on costs.