

(1992) 12 GUJ CK 0009
In the Gujarat High Court

Employees State Insurance Scheme and Others	APPELLANT
Vs	
Smt. Hasumati Devendra Makwana	RESPONDENT

Date of Decision : 21-12-1992

Acts Referred:

Citation : (1993) 1 GLR 862

Hon'ble Judges : K.G. Shah, J

Bench : Single Bench

Judgement

K.G. Shah, J.—The respondent, a Staff Nurse - a Class-III servant serving at Bapunagar General Hospital, which is under the control of the Employees State Insurance Scheme, filed the suit for a declaration that the stoppage of House Rent Allowance, which she was earlier getting, effected by the appellants is illegal. She prayed for a direction to the appellants to resume paying her House Rent Allowance (for short "H. R. A.") with retrospective effect. She also prayed for an injunction restraining the appellants from effecting from her, recovery of Rs. 5,207.55 ps. which she had already been paid as H. R. A. in past.

2. The suit of the respondent having been decreed, the appellants are in appeal.

3. The facts are few and undisputed. The respondent, as said above, is a Class-III female Staff Nurse serving at Bapunagar General Hospital. Her husband is also a Government servant, he being an Officer in the Regional Transport Office under the control of the Director of Transport. Both of them are residing in a Government quarter allotted to the husband of the respondent. The husband of the respondent is paying to the Government rent at the rate of Rs. 28.42 ps. per month, that being the standard rent as per the relevant rules applicable to him. Even in that state of affairs, in past, the appellants were paying to the respondent H. R. A. at the prescribed rate. However, the Auditors raised objections pursuant to which the appellants stopped paying H. R. A. to the respondent, and ordered the respondent to repay to them Rs. 5,207.55 ps. being the total of the amounts paid by the appellants to the respondent, in past under the head of H. R. A.

4. Government of Gujarat, Finance Department, has issued a resolution dated October 20, 1977, which is relevant for deciding the present controversy. Clause (3) of that resolution is the only relevant clause. That Clause reads as follows:

(3) In cases where Husband/wife/parent/children, two or more of them being Government servants or employees of Central Government, autonomous public undertakings or Semi-Government Organisations like Municipality, Port Trust, etc. share accommodation allotted to another Government Servant, House Rent Allowance will be admissible to only one of them, at their choice.

5. Mr. K. M. Mehta. the learned A. G. P. contended that as the husband of the respondent has been allotted Government accommodation for which he is paying rent to the Government the respondent is not entitled to claim H. R. A. because she is sharing the same accommodation with her husband. On the other hand, Mr. Pancholi, the learned Advocate for the respondent heavily relied upon Clause (3) of the aforesaid G. R. The learned Judge has reproduced that G. R. and has interpreted it. I think the interpretation is unexceptionable. A bare reading of Clause (3) of the G. R. would show that the intention of the Government is to see that when the husband and the wife or for that matter, two relatives mentioned in that Clause (3), both being either Government servants or the employees of the bodies mentioned in that clause, are sharing a common accommodation allotted to one of them, H. R. A. would be admissible to "only one of them" and "not to both". The intention behind the G. R. could never be that in such a situation none of the two would get H. R. A. If the appellants' contention is accepted, it would come to this that when two relatives as mentioned in Clause (3) are occupying the Government accommodation and one of them to whom the accommodation is allotted is paying rent to the Government, not only that one, but even the other would not be entitled to get the H. R. A. That could never be the intention behind engrafting Clause (3) in the G. R.

6. To illustrate the point, let us assume a case where both the husband and the wife are Government servants, and they are occupying a private rented premises. Under the rules, ordinarily, every Government servant would be entitled to get H. R. A. But in such a situation, in order to see that both do not get the H. R. A. and only one of them get it, a provision is required to be made. Similar is the situation where both of them are sharing Government accommodation. In order to defeat the claim for H. R. A. if made by both of them. Clause (3) in the G. R. is made. That would be clear from the last few words of the clause, which are as follows:

...House Rent Allowance will be admissible to only one of them at their choice.

(Emphasis supplied)

The underlined words in Clause (3) give a clue to the interpretation of Clause. The interpretation would be that both would not be entitled to H. R. A. but only one of them would be entitled to get H. R. A. Here, I am not concerned with the case of both of them claiming H. R. A. Here it is only one who claims H. R. A. and

she is certainly entitled to get H. R. A. for, it is admitted that the husband does not claim H. R. A. nor does he get it.

7. In the above view of the matter, the judgment and decree of the learned trial Judge upholding the claim of the respondent is unexceptionable.

The appeal is therefore, dismissed with no orders as to costs, however.