

(2000) 02 DEL CK 0025

In the Delhi High Court

Case No : CWP. No. 2694 of 1999

Gurvinder Kang and Others

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 18-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Delhi School Education Act, 1973 — Section 10

Citation : (2000) 4 AD 449 : (2000) 53 DRJ 332

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Ravindra Bhat and Mr. Navin R. Nath, for the Appellant; Mr. Sanjiv Ralli and Mr. Samir Tandon, for the Respondent

Judgement

A.K. Sikri, J.—Petitioners are the teachers teaching in Air Force Bal Bharti School, Lodi Road, New Delhi which is arrayed as respondent No.3 in this case. This school is being run by Air Force Educational and Cultural Society (Regd.) which is imp leaded as respondent No. 2. The demand of the petitioners is that they should be given HRA which is wrongly denied to them by the respondent school. The prayer is couched in the following words:

"Pass a writ, order or direction in the nature of declaration to the effect that the denial of HRA to the petitioners is vocative of Articles 14 & 16 of the Constitution of India and also vocative of Section 10 of the Delhi School Education Act.

Pass a writ, order or direction in the nature of mandamus directing the Respondents 2 and 3 to release HRA to the petitioners at least with effect from the date of the coming into force of the recommendations of the Vth Pay Commission and thereafter to continue paying the same and pass any such other order or orders as may be deemed fit and proper.

2. The petitioners have founded the aforesaid claim on the basis of following averments in the writ petition:

3. The Air Force Cultural and Educational Society (Regd.) manages and runs several schools in Delhi, independently. One of them being the Bal Bharti Air Force School, Lodi Road, New Delhi. The said school is self financing receiving no funding or grant from either the Air Force or the Central Government. The School Offers no special concessions to children of Service Officers or those of Central Government except a nominal concession in fee. The School otherwise charges fees at par with other Private Recognised Schools in Delhi like Delhi Public School, Modern School, Cambridge School etc. The School is a recognised Private Schools as defined u/s 2(R) of the Delhi School Education Act, 1973. Sometime in 1980, a decision was taken by the managing committee of the school to stop paying House Rent Allowance (HRA) to those of its employees, whose spouses were in the Armed Forces/Government Service and who in such capacity were occupying Government Accommodation. Petitioners are essentially spouses of officers in the Armed Forces and Central Government Service who are in occupation of Government Accommodation. At the relevant time H.R.A. was fixed at 15% of Basic Pay. Representations were made by individuals as well as through staff representatives to the Managing Committee against the decision not to pay H.R.A. These were however not conceded. The Government of India accepted the recommendations of the Vth Pay Commission on 30.9.1997. The same were made applicable to all recognised schools in Delhi including the Respondent No. 3 School. Under the revised Pay Rules, H.R.A. was enhanced to 30% of the Basic Pay (Basic Pay itself having almost doubled). In May 1998 representations were made by the petitioners and through the Government Aided and Public Schools Staff Associations (GAPSSA) for withdrawing the order, depriving the petitioner of H.R.A. By its reply dated 4.7.1998, the Management replied that relevant CCS Rules regarding entitlement to H.R.A. for Government Servants were squarely applicable to the petitioners and if their husbands were in Government Service, and in occupation of Government accommodation they shall not be entitled to HRA. The petitioner made another representation on 16.12.1998 to the Chairman of the Society stating that the Rule was inapplicable as they were not Govt. Servants. Petitioners made a detailed representation on 3.3.1999 to the respondent No.1 for resolving the impasse. There has however been no response. One of the anomalous situations that has arisen is that due to the deprivation of H.R.A. many of petitioners' juniors are drawing more pay than the petitioners.

4. Elaborating the aforesaid premise, it was argued by Mr. Ravindra Bhat, learned counsel for the petitioners that Section 10 of the Delhi School Education Act which is applicable in the case of respondent school, clearly stipulates that the service conditions of the teachers of recognised schools have to be the same as that of teachers in Government schools and they are also entitled to same salary, allowances and perks etc. Therefore the petitioners became entitled to HRA as HRA is given to the teachers in Government schools. It was further submitted that Delhi School Education Act has no application to Government schools and it applies only to Private schools recognised by Director of Education. Therefore,

once the petitioners were entitled to HRA by virtue of section 10 as it was paid to the teachers in Government schools, no limitations could be imposed on this right of the petitioners unless there were rules or regulations framed by Director of Education for this purpose. Admittedly, according to learned counsel, no such rules or regulations were in existence. It was the submission of Mr. Bhat that the denial of HRA on the ground that the spouse of any teacher of respondent school was in armed forces/Government service and in occupation of Government accommodation was not a valid ground. It may be a ground to deny HRA to a teacher in the Government school as HRA to such teachers teaching in Government schools was payable as per the rules framed and general orders passed which were applicable to Government servants. Those rules could not be made applicable to the petitioners ipso facto. According to him, any negative covenant to deny benefit of HRA to the petitioners have to be in writing specifically encompassing the service conditions of petitioners and such rules applicable to the Government servants or for that matter teachers in the Government schools were not to be treated as a condition for payment of HRA to the petitioners also. He submitted that otherwise it would create anomalous position and gave following examples:

(a) A teacher who was not married at the time of employment would be getting HRA. However if she marries later to a Government servant who is in occupation of Government quarter her HRA would be stopped.

(b) On the other hand, such teacher who marries a person who in private employment, would continue to get the HRA even if such an employee in private company is given accommodation by his employer.

(c) Such spouse in private employment if secures appointment in Government service, and is allotted Government accommodation, the petitioner teacher would again stop getting HRA.

(d) Again if a spouse who is in the Government employment resigns or ceases to be Government employee and gives up the Government accommodation, the petitioner teacher would again start getting HRA.

(e) In case the teacher divorces his spouse who is in Government service and is having Government accommodation, such teacher would again start getting HRA.

5. Mr. Bhat further submitted that all the teachers working in the private recognised schools were class in themselves and there could not be further classification within the classification and the examples quoted above, according to him, create further classification. It was also submitted that denying the HRA to some and granting the same to others and creating such classification was based on no intelligible differentia and had no nexus with the objective sought to be achieved. He relied upon the para 37 of the judgment of Supreme Court in the case of AIR India Vs. Nergesh Meerza and Others, which reads as under :

"Para 37: Thus, from a detailed analysis and close examination of the cases of

this Court starting from 1952 till today, the following propositions emerge:-

(1) In considering the fundamental right of equality of opportunity a technical, pedantic or doctrinaire approach should not be made and the doctrine should not be invoked even if different scales of pay, service terms, leave, etc., are introduced in different or dissimilar posts.

Thus, where the class or categories of service are essentially different in purport and spirit, Art. 14 cannot be attracted.

(2) Art. 14 forbids hostile discrimination but not reasonable classification. Thus, where persons belonging to a particular class in view of their special attributes, qualities, mode of recruitment and the like, are differently treated in public interest to advance and boost members belonging to backward classes, such a classification would not amount to discrimination having a close nexus with the objects sought to be achieved so that in such cases Art. 14 will be completely out of the way.

(3) Article 14 certainly applies where equals are treated differently without any reasonable basis.

(4) Where equals and unequals are treated differently, Art. 14 would have no application.

(5) Even if there be one class of service having several categories with different attributes and incidents, such a category becomes a separate class by itself and no difference or discrimination between such category and the general members of the other class would amount to any discrimination or to denial of equality of opportunity.

(6) In order to Judge whether a separate category has been carved out of a class of service, the following circumstances have generally to be examined:

(a) the nature, the mode and the manner of recruitment of a particular category from the very start.

(b) the classifications of the particular category,

(c) the terms and conditions of service of the members of the category,

(d) the nature and character of the posts and promotional avenues,

(e) the special attributes that the particular category possess which are not be found in other classes, and the like."

6. He also referred to paras 14 & 20 of Deepak Sibal Vs. Punjab University and Another, which read as under:-

"Para 14: It is difficult to accept the contention that the Government employees or the employees of Semi-Government and other institutions, as mentioned in the impugned rule, stand on a different footing from the employees of private

concerns, in so far as the question of admission to evening classes is concerned. It is true that the service conditions of employees of Government/Semi government institutions etc. are different, and they may have greater security of service, but that hardly matters for the purpose of admission in the evening classes. The test is whether the employees of private establishments are equally in a disadvantageous position like the employees of Government/Semi Government institutions etc. in attending morning classes. There can be no doubt and it is not disputed that both of them stand on an equal footing and there is no difference between these two classes of employees in that regard. To exclude the employees of private establishments will not, Therefore, satisfy the test of intelligible differentia that distinguishes the employees of Government/Semi-Government institutions etc. grouped together from the employees of private establishments. It is true that a classification need not be made with mathematical precision but if there be little or no difference between the persons or things which have been grouped together and those left out of the group, in that case the classification cannot be said to be a reasonable one.

"Para 20: In considering the reasonableness of classification from the point of view of Art. 14 of the Constitution, the Court has also to consider the objective for such classification. If the objective be illogical, unfair and unjust, necessarily the classification will have to be held as unreasonable. In the instant case, the foregoing discussion reveals that the classification of the employees of Government/Semi-Government institutions etc. by the impugned rule for the purpose of admission in the evening classes of Three Year LL.B. Degree course to the exclusion of all other employees is unreasonable and unjust, as it does not subserve any fair and logical objective. It is, however, submitted that classification in favor of Government and public sector is a reasonable and valid classification. In support of that contention, the decision in Hindustan Paper Corpn. Ltd. Vs. Government of Kerala and Others, has been relied on by the learned Counsel for the respondents. In that case, it has been observed that as far as Government undertakings and companies are concerned, it has to be held that they form a class by themselves, since any project that they may make would in the end result in the benefit to the members of the general public. The Government and public sector employees cannot be equated with Government undertakings and companies. The classification of Government undertakings and companies may, in certain circumstances, be a reasonable classification satisfying the two tests mentioned above, but it is difficult to hold that the employees of Government/Semi government institutions etc. as mentioned in the impugned rule, would also constitute a valid classification for the purpose of admission to evening classes of Three Year LL.B. Degree Course. The contention in this regard, in our opinion, is without any substance."

7. He further relied upon the judgment of Workmen, Meenakshi Mills Ltd. Vs. Meenakshi Mills Ltd. reported in 1995 LIC 29 as well as Supreme Court judgment in the case of Roop Chand Adlakha and Others Vs. Delhi Development Authority and Others, and Miss Raj Soni Vs. Air Officer in Charge Administration and

another, .

8. Countering the aforesaid submissions of Mr. Bhat, Mr. Sanjiv Ralli, learned counsel appearing for the respondent school submitted that the petitioners were entitled to HRA only subject to the rules relating to HRA in case of Government servants. His submission was that Section 10 of the Delhi School Education Act only provides that scale of pay, allowances and other prescribed benefits of the employees of a recognised private schools cannot be less than those of the employees of the corresponding status working in Government schools. There was no specific stipulation about HRA. However petitioners were claiming payment of HRA on the basis of Section 10 as this was one of the prescribed benefits which the teachers in Government schools were getting. Thus one had to see the nature of benefit being given to the Government schools. The teachers in Government schools were getting HRA on the basis of office memorandum dated 27.11.1965 of Government of India, Ministry of defense as amended from time to time (HRA memorandum). But for this memorandum dated 27.11.1965, teachers in Government schools would not have got HRA and accordingly petitioners could not have claimed HRA. Thus if HRA was being given to teachers in Government schools on the basis of HRA memorandum dated 27.11.1965 then the conditions attached to the grant of such HRA to the teachers in Government schools would automatically become applicable to the petitioners. Petitioner cannot get the HRA divorced from such conditions with which HRA is paid to the teachers in Government schools. He relied upon to the following averments made in the counter affidavit in support of his submission:

"The claim of the petitioners in the present petition is based on the contention that para 5(c) of the Office Memorandum dated 27.11.65 of the Govt. of India, Ministry of Finance, as amended from time to time, (HRA Memorandum) is not applicable to them because they are not the Government servants. It is submitted that as per Section 10 of the Delhi School Education Act, 1973 ("the Act") the scale of pay, allowances and other prescribed benefits of the employees of a recognised private school cannot be less than those of the employees of the corresponding status working in Government schools. Undisputedly, there is no provision in the Act or in the Rules made on the subject of HRA for the employees of the schools governed by the Act including unaided recognised private schools like Respondent No. 3. in the absence of such Rules, the provisions of HRA Memorandum apply to the employees of the Government schools who fall in the category of Government servants. Thus, in view of Section 10 of the Act, entitlement of the employees of recognised private schools to HRA is also determined by applying HRA Memorandum. It is further submitted that the petitioners, being teachers working in a recognised private school, are entitled to pay scale and allowances etc. equal to those which are being given to teachers working in the Government schools. Therefore, the Rules and Policy which over the grant of such benefits to the employees of Govt. schools will also apply to the employees of recognised private schools, more so when there is no parallel provision in the Act or the Rules on the relevant subject i.e. HRA. This

being the legal and factual position of the matter, para 5 of HRA Memorandum applies to the petitioners. Admittedly, the spouses of the petitioners being Govt. servants have been allotted Govt. accommodation. In this view of the matter, the claim of the petitioners for HRA is untenable and the writ petition is without any merit and is liable to be rejected."

9. He also referred to the following judgments in support of his submission which deal with the nature and concept of HRA :-

1. Director, Central Plantation Crops Research Institute, Kesaragod and Ors. Vs. M. Purushothaman and Ors., reported in AIR 1994 SC 2541

2. The State of West Bengal and Others Vs. Ranbindra Nath Sengupta and Others, .

3. The Divisional Engineer, G.I.P. Railway Vs. Mahadeo Raghuo and Another, .

10. After considering the respective submissions of both the parties, I am inclined to agree with the stand taken by the respondent school. It is obvious that the entitlement of the petitioners to HRA has to be determined as per Section 10 of the Act, according to which the salary benefits and other allowances like HRA of the employees of recognised private schools shall be similar to those drawn and enjoyed by the teachers of a Government school. The entitlement HRA of teachers working in the Government Schools is decided by applying HRA Memorandum 27.11.1965. Para 4 of this HRA memorandum entitles the grant of HRA to the Government servants subject to certain conditions and prescribed rates at which it is to be given. Para 5(c) stipulates certain conditions for drawal of HRA which read as under :

"5(c) A Government servant shall not be entitled to house rent allowance if__

(i) he shares Government accommodation allotted rent free to another Government servant; or

(ii) he/she resides in accommodation allotted to his/her parents/son/daughter by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc.;

(iii) his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government Organisation such as Municipality, Port Trust etc., whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

11. But for this HRA memorandum dated 27.11.1965, petitioner would not have become entitled to HRA. It is this memorandum which becomes basis of grant of HRA to Government servants including employees of Government schools and since such an allowance is given to the teachers in Government schools, the petitioners have been able to claim this allowance because of Section 10 of the

Delhi School Education Act. If HRA memorandum is the basis of grant of HRA to the teachers in Government schools, and consequently teachers in private schools then the entire HRA memorandum is to be applied even in the cases of petitioners. When HRA is to be paid to the teachers, the conditions on which it is to be paid, cannot be separated from the entitlement of HRA. In case if these conditions are separated and the petitioners become entitled to HRA even when their spouses are in Government service and in occupation of Government accommodation. The effect of that would be giving benefit to the employees in private schools which is more than the benefit admissible to the teachers of Government schools. The purpose underlying Section 10 is to provide same service conditions as provided to the teachers of Government schools. This section cannot be applied in a manner which gives them more advantage and puts them in a better footing than the teachers of the Government schools. After all, what is the purpose of giving HRA. It is to compensate the employee who is deprived of an accommodation. If the spouse of the teacher of private recognised school is allotted Government accommodation then there is no question of compensating such an employee of private recognised school. It has been held by the Supreme Court that HRA is not part of wages. In para 7 in the case of Director Central Plantation Corps Research Institute, Kesaragod & Ors. Vs. M. Purushothaman and Ors., reported in AIR 1994 SC 2541 dealing with the concept of HRA made the following pertinent observations:

"We are also afraid that the Tribunal is not right in including the HRA in the definition of wages. The Fundamental Rule 9 (21) (a) which is applicable to the respondents-employees defines "pay" as follows:-

"9(21)(a) Pay means the amount drawn monthly by a Government servant as (i) the pay, other than special pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President."

12. It may also be pertinent to reproduce para 26 of the judgment in the case of The State of West Bengal and Others Vs. Ranbindra Nath Sengupta and Others, :

"After giving our careful consideration to the facts and circumstances of the case and the submission made by the respective counsel for the parties, it appears to us that distinction between two classes of Government employees, namely, those who have been provided with Government accommodation qua Government employees and license in respect of such Government accommodation being coterminous with the service, stand on a different footing from the other Government employees who have not been provided with such Government accommodation. In the instant case, it has not been demonstrated with relevant

documents that in LIG/MIG/HIG flats belonging to the Government, the Government employees are allowed to continue as tenant like ordinary members of the public by virtue of being in Government service. Even if it is assumed that some Government employees have got tenancy rights under the State Government in respect of public premises such tenancy right has not been given qua Government servant but as member of public. Under the 1984 Act, allotment of Government flat in "Government premises" can only be made as licence, period of license being coterminous with employment, hence, occupation of a Government servant as a tenant under the State is not similar as the occupation as a license in "Government premises". It has also not been demonstrated with supporting documents as to how many Government employees have been given tenancy in Government premises and how many members of public have also been allowed to remain there as tenant. Under the 1984 Act, allotment of Government flat in "Government premises" have been statutorily altered and such employees have become licensees. Therefore, such licensees stand entirely on a different footing. Such distinction has a reasonable basis and it cannot be contended that such distinction is without any nexus to the object of grant of HRA. It is the positive case of the State Government that the writ petitioners are occupying Government premises as defined under 1984 Act holding the status of licensee. It is the case of the State Government that they have been provided such Government accommodation as licensee in "Government premises, which are not meant for occupation by the members of the public. Even if it is assumed that in Government premises, nonGovernment employee has been allowed to occupy as tenant, the grant of such tenancy is not a regular affair and such tenancy even if any in, "Government premises" is against the scheme under the 1984 Act. It is also the case of the State Government that nominal license fee is required to be paid for such occupation in "Government premises". Since the writ petitioners and the similarly circumstances employees having accommodation in Government premises qua Government employees are licensees and the license is coterminous with the service, they are required to pay only nominal fee for such occupation as found by the Pay Commission. Therefore, there is justification that such Government employees are not to be given the full amount of HRA but they will be reimbursed to the extent of license fee paid by them."

13. In view of aforesaid discussion it is not correct on the part of the petitioners to allege that the so called negative covenant attached to admissibility of HRA should not be applied in the case of petitioners who are employees of private recognised schools. The examples given by petitioners alleging anomalies which may arise, are without any basis. Such situations are normal and may arise even when both the spouses are working in Government schools. These are the inevitable consequences which may arise when a teacher marries a person who is a Government employee or a private employee or secures Government accommodation or ceases to be a Government employee or when the teacher divorces a Government employee. There is nothing unusual about it. It is misconceived on the part of the petitioners to allege that the classification made

by the respondents is improper. In fact the categorisation or classification is between those teachers whose spouses are allotted Government accommodation and those teachers whose spouses are not having any Government accommodation. HRA is admissible in the later category to compensate them for want of any accommodation and such a classification is proper, rational and has the nexus with the objective sought to be achieved. If the contention of the petitioners is accepted then even the teacher in Government school whose spouse is allotted the Government accommodation can successfully challenge nongrant of HRA on the ground that it is based on irrational classification. This is not so and cannot be so. For these reasons various judgments cited by the petitioners have no application in the instant case. It is only an ingenuity brought out by the petitioners in claiming some benefits which they neither deserve in law nor in equity. When their spouses are in Government service and are allotted Government accommodation, which is shared by the petitioners, petitioners cannot enrich themselves unjustly by still claiming HRA and in the process put them in a better position than their counterparts in the Government schools. This was not the intention or spirit behind Section 10 of the Delhi School Education Act. The interpretation of the provision in the manner suggested by the petitioners would give them undue benefit over the Teachers in Government schools with whom they are claiming parity. This will clearly lead to absurd and anomalous situation and no such interpretation can be given which leads to absurdity. One may conclude by quoting the following principles stated by Lord Shaw in the following words:

"Where words of a statute are clear, they must, of course, be followed but in their Lordships opinion, where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system". (Shannon Realities Ltd. Vs. St. Michel (Ville De), (1924) AC 185 "

14. This writ petition fails and is accordingly dismissed. Rule is discharged.

15. There shall be no orders as to costs.