

(1994) 02 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9535 of 1993

Harjinder Kaur and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 24-02-1994

Acts Referred:

Citation : (1994) 106 PLR 757

Hon'ble Judges : N.K. Kapoor, J; Amrit Lal Bahri, J

Bench : Division Bench

Advocate : P.K. Goklaney, for the Appellant; R.K. Joshi, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.L. Bahri, J.—Vide this judgment, four writ petitions (Nos. 9535, 7580, 8916 and 14127 of 1993) are being disposed of as the question involved therein is common, with regard to recovery of excess House Rent Allowance having been withdrawn by the petitioners. Judgment is prepared in Civil Writ Petition No. 9535 of 1993 (Harjinder Kaur and Ors. v. State of Punjab and Ors.).

2. The petitioners in all these writ petitions are teachers posted in rural areas, situated within 16 kilometers of the International Border (Border with Pakistan). Before August 1988, they were getting 12-1/2 per cent of their basic pay towards House Rent Allowance in lieu of rent free accommodation, which was required to be provided to them by the State, being situated in the border area. At that time 12-1/2 per cent of the basic pay was being given as House Rent Allowance to the employees stationed in first class cities. Instructions on this subject are contained in letter Annexure P-I dated May 15, 1973. The Third Punjab Pay Commission made recommendations for revising pay scales of the Punjab Govt. Employees as well as House Rent Allowance payable to them. On the recommendations of Punjab Pay Commission so made, the Punjab Government issued instructions dated August 30, 1988-Annexure P.2. The cities and towns were divided into four classes, (i.e. "A", "B", "C and "D") on the basis

of population. The rates of House Rent Allowance of various pay ranges admissible in different classes of towns as aforesaid were provided. Some of the employees, who were getting more House Rent Allowance than provided therein, were given protection as under:-

" However, the amount of house rent allowance drawn by the employees at higher rates than those specified shall be protected, till further rate of house rent allowance gets adjusted in these revised rates."

The decision contained in Annexure P-2 was to be given effect from September 1, 1988. Some of the Punjab Government employees, like the petitioners, even after enforcement of these instructions (Annexure P-2) continued withdrawing House Rent Allowance at the rate of 12-1/2 per cent, as permissible to employees of cities under the old instructions (Annexure P-1). On the subject of grant of House Rent Allowance in lieu of rent free accommodation, instructions Annexure P-4 were issued on December 23, 1988. The Government employees, who were entitled to rent free accommodation when the same was not provided, were allowed additional 5 per cent of the basic pay to the normal House Rent Allowance, if admissible at the place of posting. These instructions were also made effective from September 1, 1988. On June 9, 1992, instructions Annexure P-5 were issued after the High Court had finally decided Letters Patent. Appeal No. 895 of 1991, to effect recoveries from such of the employees, who had withdrawn excess House Rent Allowance. Representation Annexure P-6 was filed by the petitioners that they were validly paid House Rent Allowance as per instructions then prevalent and that the recovery could not be effected from them. Since the Government was adamant to recover the excess House Rent Allowance withdrawn by the petitioners, they have approached this Court in these writ petitions with the prayer that the respondents be directed not to recover the excess House Rent Allowance withdrawn by them for the period August 30, 1988 to September 19, 1990.

3. The respondents have contested the claim of the petitioners. After the Third Punjab Pay Commission made the recommendations, the Government issued separate instructions on August 30, 1988, with respect to payment of House Rent Allowance was made payable to the Government employees stationed at towns and cities, as described in one of the instructions issued on August 30, 1988, and with respect, to Government employees stationed in other rural areas, they were to be allowed Rural Area Allowances as per separate instructions issued on that very day. Outside those instructions, no such House Rent Allowance was payable and if Government employees were getting some House Rent Allowance earlier at their respective places of posting, that is deemed to have been withdrawn or denied. Rural Area Allowance was in-fact allowed in place of House Rent Allowance because of the report of the Third Punjab Pay Commission. From time to time, clarifications in this respect were made by the State Government. Copies of such instructions were attached as Annexure R-1 dated May 31, 1990, Annexure R-2 dated December 23, 1988 and Annexure R-3 dated August 17,

1988. The instructions Annexure R-3 are specific with respect to payment of five per cent of the basic pay in addition to the House Rent Allowance payable in the towns or the cities or rural area allowance payable in rural areas on account of rent free accommodation when the same was not provided and the protection clause given in instructions dated August 30, 1988 was only meant for higher House Rent Allowance being drawn to be adjusted in respect of towns and cities. Vide instructions Annexure R-2, dated December 23, 1988, the aforesaid instructions Annexure R-3 were to be given effect from September 1, 1988. After the decision of Civil Writ Petition No. 8534/1988 on December 19, 1989, the instructions Annexure R-1 were issued to effect recoveries of the excess House Rent Allowance drawn by the employees.

4. After hearing counsel for the parties, we are of the view that no case for interference in these writ petitions is made out. Copy of the instructions dated August 30, 1988 allowing Rural Area Allowance has also been produced. On going through the instructions Annexure P-2, which are enforced with effect from September 1, 1988, it is quite clear that the payment of House Rent Allowance stands modified. All the Government employees stationed in the State of Punjab are either allowed House Rent Allowance or Rural Area Allowance. House Rent Allowance is payable to the Government employees stationed in the towns and the cities, which are now classified as "A", "B", "C" and "D" in the instructions Annexure P-2. The other employees in rural areas, are now entitled to the grant of Rural Area Allowance on the rates mentioned in instructions dated August 30, 1988. Grant of House Rent Allowance being a concession could be withdrawn, as has been held by the Division Bench of this Court in Letters Patent Appeal No. 895/1991, which was filed against the decision of Single Judge in Civil Writ Petition No. 13504 of 1990. Several connected Letters Patent Appeals were decided alongwith the aforesaid judgment. The contention of counsel for the petitioners is that since the petitioners were posted in rural areas and were being paid 12-1/2 per cent of their basic pay as House Rent Allowance their place of posting being within the border area, are entitled to draw the same, as it stood protected under instructions Annexure P-2. This contention is devoid of merit. These instructions, as already stated above, allowed House Rent Allowance to the Government employees stationed at towns and cities, described as "A", "B", "C" and "D" and the protection granted therein is only if such employees were getting more House Rent Allowance than provided in the instructions, which stood protected till adjustment is made. From this it cannot be spelled out that the House Rent Allowance being drawn by the employees who are not stationed in the towns and cities, classified aforesaid stands protected and the petitioners would continue to get the same. Protection clause, as aforesaid, does not apply to the House Rent Allowance which was earlier drawn by the employees stationed at rural areas.

5. For the Government employees, who are stationed in the rural areas as already stated above, separate instructions were issued on August 30, 1988, providing rates of such allowance in accordance with the pay range. No such

protection clause was provided in this letter with respect to the House Rent Allowance. The only clause (3) mentioned therein referred to bet area, border area, sub-montane/hill area and Knadi area allowance which stood discontinued. Only exception was made with respect to Border Area compensatory allowance, which was higher in rates than those of Rural Area Allowance specified therein, which was protected. As already stated above, Government employees who are drawing House Rent Allowance higher than Rural Area Allowance as provided in these instructions, do not stand protected. Rather the grant of Rural Area Allowance is in lieu of House Rent Allowance.

6. The Government employees, who are stationed within the border belt, are to get 5 per cent of the basic pay in addition to the House Rent Allowance or Rural Area Allowance with effect from 1st September, 1988, as per instructions referred to above. If the petitioners have drawn more amount towards House Rent Allowance, they are liable to refund the same.

7. For the reasons recorded above, these writ petitions are dismissed.