

(2015) 08 DEL CK 0022

In the Delhi High Court

Case No : Writ Petition (C) 6149 of 2013

Harvinder Singh Rana

APPELLANT

Vs

National Seed Corporation Ltd.

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Citation : (2015) 08 DEL CK 0022

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : H.P. Chakraborty, S.K. Arya and Kanchan Chauhan, for the Appellant; Parikshit P. Angadi and V.N. Raghupathy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J—This is a writ petition filed by the petitioner inter alia challenging the orders dated August 6, 2010, June 5, 2012 and February 18, 2013, with a further prayer in the nature of a direction to the respondent to pay House Rent Allowance (HRA) to the petitioner with effect from August 1, 2010 to January 31, 2011 and refund of amount of Rs. 4,66,542/- recovered from the settlement and retirement dues with interest @ 18% p.a.

2. The case of the petitioner is that he was working with the respondent-Corporation. On November 23, 1993, the wife of the petitioner being an employee of UGC, was allotted a Quarter No. 23-L, Sector 4, Gole Market, New Delhi-110001. In the month of June 2010, the respondent-Corporation had asked the employees including the petitioner to submit the residential address in the performa, which the petitioner did on June 25, 2010. It is his case that for the month of August 2010, he got less salary on account of the fact, the respondent had stopped HRA. He retired from the services on normal superannuation on January 31, 2011, when without issuing a show cause notice, the respondent had deducted an amount of Rs. 4,66,542/- from the retirement dues. It is his case that the Fundamental Rules together with the Supplementary Rules (FRSR) relating to the payment of HRA is not applicable to the respondent-Corporation,

at least till 2010. According to him, the Government of India Rules/Instructions are not applicable automatically to the respondent-Corporation, nor any resolution has been relied upon, that the same had been adopted by the respondent-Corporation. Meaningfully read, non-payment of HRA for the period before 2010 is justified and the same could not have been recovered by the respondent.

3. On the other hand, the respondent, in its counter affidavit has submitted that the respondent-Corporation is wholly owned by the Government of India under the administrative control of Ministry of Agriculture, Government of India. As per the NSC Board's meeting held on April 28, 1965, an approval was given to the application of the Government of India Rules/Instructions to the staff of Corporation. Hence, the employees of NSC are being regulated in accordance with the Government of India Rules and Regulations, where the Corporation is not having its own Rules and Regulations. That apart, it is the stand that on December 20, 1989, the Memorandum was issued by the Ministry of Finance, Government of India, stating that a Government Servant shall not be entitled to HRA if his/her wife/husband has been allotted accommodation at the same station by the Central Government, State Government, Autonomous Public Undertaking or Semi Government Undertaking such as Municipality, Port Trust etc. whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her. Hence, the employees of the NSC were not eligible for HRA if their spouses were allotted Government accommodation and were residing with the spouses in the same.

4. Mr. H.P. Chakraborty, learned counsel for the petitioner would rely upon the communication made by the respondent-Corporation with the Senior Audit Officer wherein a stand has been taken by NSC that since the NSC does not get any financial/budgetary support from the Government of India to meet its recurring expenditure on salaries and allowances payable to its employees and follows the recommendations of the Pay Commission pursuant to the approval of its Board of Directors in supersession of earlier resolutions/orders, the decision of the Board of Directors in the 14th Meeting held on April 28, 1965 cited by the Audit is not applicable as on date. He has also drawn my attention to the Notification issued on June 14, 2010 to say that it is for the first time, in the year 2010, that, such a decision has been taken. In other words, since the period in question is before June, 2010, the employees were entitled to HRA. Mr. Chakraborty has also referred to a decision in the case of Shanti Devi in terms of Annexure III to the rejoinder, to contend that, in her case also an issue of payment of HRA was raised in a similar manner as her husband was allotted a Government accommodation. He states that HRA in her case was restored by dropping the audit objection. According to him, similar is the case of the petitioner and he could not have been discriminated.

5. Mr. Parikshit P. Angadi, learned counsel appearing for the respondent, on the other hand, would reiterate the case as set up by the respondent in the counter

affidavit.

6. Having heard the learned counsel for the parties, it is noted that way-back in the year 1965, it has been decided by the respondent-Corporation that employees of the NSC would be regulated in accordance with the Government of India Rules/Regulations where the Corporation is not having its Rules/Regulations. There is no dispute on the fact that the Government of India's OM dated December 20, 1989 stipulates that if a wife/husband of an employee is allotted Government accommodation at the same station by the Central Government, State Government, Autonomous Public Undertaking or Semi Government Organization, such as, Municipality, Port Trust etc., the Government employee would not be entitled to HRA. In view of the 14th Meeting of the Board dated April 24, 1965, the Government of India's OM dated December 20, 1989 shall be applicable. The office instructions dated June 14, 2010 was issued as during that period, it has come to the notice of the authorities that the employees are drawing HRA in contravention of the provisions of the FRSR, and by said circular, the information was sought by the author of that circular, calling upon the Heads of different divisions of the respondent-Corporation to furnish the requisite information. There cannot be any dispute to the fact that the respondent-Corporation is an entity formed by the Government of India under the administrative control of Ministry of Agriculture. The sweep of instructions dated December 20, 1989 would include the offices of the Central Government, State Government, PSUs and Semi Government organizations. Surely, the respondent-Corporation being an entity of the Government of India, would get covered in the OM dated December 20, 1989.

7. Further, the plea of discrimination raised by the petitioner is also untenable in view of one of the impugned orders dated August 6, 2010, wherein, the name of Ms. Shanti Devi also featured. In other words, qua her also, HRA has been stopped. Further, the impugned order was passed on August 6, 2010. The petitioner did not challenge the same till his retirement on November 30, 2011 or even thereafter. The petition has been filed only on August 2, 2013 after almost 1 1/2 years from the date of superannuation and almost three years from the date, of order i.e. August 6, 2010. The respondent, on the strength of the order dated August 6, 2010 has stopped paying HRA to the petitioner. That apart, they have recovered the HRA wrongly paid to the petitioner from the retirement dues. In fact, the present petition would be also hit by delay and laches.

8. In view of the discussion above, the petitioner has not made out a case for interference by this Court. The writ petition is dismissed.

9. No costs.