

(2015) 04 DEL CK 0213

In the Delhi High Court

Case No : Writ Petition (C) No. 3583 of 2007

Jagdish Prasad and Others

APPELLANT

Vs

University of Delhi and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 41 Rule 23, Order 41 Rule 23(A), Order 41 Rule 23A, Order 41 Rule 24
Constitution of India, 1950 — Article 14

Citation : (2015) 04 DEL CK 0213

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : S. Sunil, for the Appellant; Saurabh Banerjee, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—This writ petition, along with certain other connected writ petitions, was decided on merits as per the judgment of this Court dated 21.10.2013. The judgment dated 21.10.2013 holds that the petitioners were not entitled to House Rent Allowance (HRA), and accordingly entitled the respondent no. 4/College/employer (which is affiliated with the respondent no. 1/University of Delhi) to make recoveries of amounts unauthorisedly paid as HRA to the petitioners in view of the judgment of the Supreme Court in the case of Chandi Prasad Uniyal and Others Vs. State of Uttarakhand and Others, AIR 2012 SC 2951 : (2012) 135 FLR 161 : (2012) 7 JT 460 : (2013) 169 PLR 148 : (2012) 7 SCALE 376 : (2012) 8 SCC 417 : (2012) AIRSCW 4742 : (2012) 5 Supreme 418 .

2. An appeal was filed against this judgment and the Division Bench of this Court by its judgment dated 21.5.2014 in LPA No. 973/2013 (along with other LPAs, which was decided by the same order), set aside the judgment of this Court dated 21.10.2013 and while setting aside the judgment has made the following observations and directions:-

" xxxxxx

8. We find that the assumption by the learned Single Judge that to those employees to whom accommodation had been provided by the colleges, House Rent allowance would not be payable is ignoring the fact that the Writ Petitions were not filed on the premise that if the employer has been in the past, making payments erroneously, the recoveries cannot be made. The writ petitions were premised inter-alia on the ground that the so called license deeds were actually rent agreements. That the term of allotment required the allottee to maintain the premises and thus on the terms of the grant it could not be held that HRA would not be liable to be paid. It was further the case that House Rent Allowance Rules pertaining to civil servants are not applicable to the employees of various colleges established, constituent or affiliated to the University of Delhi.

9. These aspects of the matter have not been dealt with by the learned Single Judge.

10. Accordingly, LPA No. 964, LPA No. 973/2013 and LPA No. 82/2014 are allowed. The impugned decision dated October 21, 2013 in so far W.P.(C) No. 3657/2007 and W.P.(C) No. 3583/2007 had been dismissed is set aside. The Writ Petitions are restored for adjudication on merits afresh. To be listed for directions before the learned Single Judge on July 22, 2014.

11. At this stage, we would also note that the learned Single Judge has not minutely looked into the facts while applying the law declared by the Supreme Court in Chandi Prasad Uniyal's case (supra). Two decisions passed by the two Division Benches of this Court which have clarified on the law declared in Chandi Prasad Uniyal's case have not been gone into. The two decisions are W.P.(C) No. 5825/2012 J.D. Tiwari vs. CPFC dated October 29, 2013 and the decision reported as 203 Union of India and Another Vs. J.S. Sharma and Others, (2013) 203 DLT 514 .

12. If the learned Single Judge were to hold against the writ petitioners on their non entitlement to receive HRA, with respect to past payments made, the issue would be decided even in view of the law declared in Chandi Prasad Uniyal's case (supra) by the Supreme court as expounded by two Division Benches of this Court.

13. As regards the writ petitions above noted, they shall be listed for directions before the learned Single Judge on July 22, 2014, a date on which we are informed other writ petitions are also coming up for hearing before the learned Single Judge."

3. Before going to what are the directions issued by the Division Bench to this Court as per its aforesaid paras 8 to 13 for deciding this writ petition, I would at this stage like to note the provisions of Order XLI, Rules 23, 23(A) and 24 of the Code of Civil Procedure, 1908 (CPC). These provisions contain the powers of the appellate court with regard to remanding the matter or deciding the matter itself.

These provisions read as under:-

" Order XLI Rule 23

23. Remand of case by Appellate Court. - Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, which directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall, subject all just exceptions, be evidence during the trial after remand.

Order XLI Rule 23(A)

23A. Remand in other cases. - Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.

Order XLI Rule 24

24. Where evidence on record sufficient, Appellate Court may determine case finally. - Where the evidence upon the record is sufficient to enable the Appellate court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds."

(underlining is mine)

4 (i). Order XLI Rule 23 of the CPC provides that if a suit is not decided on merits, but the same is decided only on one preliminary point or only on preliminary points, an appellate court on passing its judgment setting aside the judgment of the trial court on the preliminary issue(s), remands the suit to the trial court to decide all the issues in the case. Obviously this provision concerns with the position when the trial court decides the suit only on preliminary issues (Re:Order XIV Rule 2 CPC) and not on all other issues.

(ii) Order XLI Rule 23(A) of the CPC provides the position that the matter may be remanded back by the appellate court even if the trial court has decided the suit on all aspects, provided a re-trial is found necessary i.e. fresh evidence is required to be led by either or both the parties. Remand is therefore necessary, inasmuch as on the basis of the fresh evidence, there will be a fresh decision on the issues in the suit.

(iii) As differentiated from Order XLI Rules 23 and 23A, Order XLI Rule 24 of the CPC makes it clear that if on the basis of the existing record, a suit can be

decided in one way or the other by the appellate court, then in such a case the appellate court does not remand the matter for a fresh decision to the trial court, but the appellate court decides the matter itself, the object of law being that there should not be unnecessary wastage of time, money and energy of the parties by again directing the trial court to decide a matter once the record is otherwise complete for deciding the case on merits by the appellate court. In fact the last line of Order XLI Rule 24 of the CPC makes it clear that the appellate court can decide the suit on a totally different reasoning than given by the trial court in order to sustain the judgment of the trial court, and which is because such reasoning can be arrived at on the basis of the existing record of the trial court.

(iv) The conclusion of the above is that once the record has not to be added to, and the trial court has not decided on a preliminary point and a re-trial is not necessary, the appellate court does not have a power to remand the matter, but the appellate court is obligated to decide the matter itself. Possibly one other reason for the existence of Order XLI Rule 24 of the CPC is that if the appellate court holds that the suit has been wrongly decided, and it still remands the matter, in such cases it can be in one way said that the effect of remand can be taken that the trial court is to in effect decide the matter in a particular manner inasmuch as the appellate court holds that the suit had been wrongly decided originally. Surely this cannot be the position in law for the purpose of remand.

5. The judgment of this Court dated 21.10.2013 decided the petition on merits. Of course, it is the privilege of the appellate court to hold the judgment as one capable of being sustained or not, however, that assessment has to be done on merits by passing a judgment and not by remanding the matter to the original court for deciding the matter afresh, but the appellate court has not decided the case but has remanded the matter to this Court for decision afresh on merits. No doubt, the provisions of CPC are not applicable to the writ petitions and LPAs under Clause 10 of the Letters Patent, but since there are no other provisions dealing with the powers of the appellate court with respect to remanding a matter, surely, the principles of law contained in the provisions of Order XLI Rules 23, 23(A) and 24 of the CPC would squarely apply. Be that as it may, since this Court is bound by the directions of the Division Bench, hence this Court is proceeding to re- decide the matter on merits.

6. The issue in the present case arises from the following facts stated in a nutshell. The petitioners are class-IV employees of the respondent no. 4/I.P. College. Petitioners by this writ petition pray for quashing of the letter dated 09.4.2007 issued by the University Grants Commission (UGC) /respondent no. 2, and which directed that all colleges affiliated to the University of Delhi should give certificates that such colleges are not paying HRAs to its employees where the employees are being provided accommodation by the College or the Trust/ Foundation which is running the College. UGC had issued this direction, inasmuch as Ministry of Human Resource Development(HRD) /Union of India which funds

the UGC directed the UGC to take such certificates from the universities and the affiliated colleges. This letter of the UGC dated 09.4.2007 reads as under:-

"FAX No. 66603066 UNIVERSITY GRANTS COMMISSION, BAHADURSHAH ZAFAR MARG, NEW DELHI- 110002

All Communication should be addressed to the secretary by designation and not by name.

F.1-36/2000 (DC)

- 9 APR 2007 APRIL 2007

The Principal I.P. College, Sham Nath Marg, Delhi-110007

SUBJECT:- INADMISSIBLE PAYMENT OF HRA TO THE ALLOTTEES OF STAFF QUARTERS IN DELHI COLLEGES REGARDING.

Sir/Madam,

I am directed to invite your attention to this office letter of even no. dated 08/03/2001 regarding inadmissible payment of HRA to the allottees of Staff Quarters in Delhi Colleges. The staff who are in occupation of staff quarters are not eligible for HRA as per FRSR of Govt. of India.

UGC has sent several letters to the trust maintained colleges to stop the practice of payment of HRA to the allottees of staff quarters. However a few Trust Colleges are still paying HRA to the allottees of staff quarters even after the above instructions of UGC.

The Ministry of Human Resources Development has called for a status for a status note on this issue from UGC. Accordingly, a status note was sent to the Ministry of Human Resources Development of UGC. After examining the same, the Ministry has requested confirmation from UGC that no employee having accommodation in this college staff quarters is paid HRA.

In view of the above, you are requested to furnish a certificate to the effect that the allottees of staff quarters is not being paid HRA.

The above certificate should reach the office latest by 30/4/2007 so as to enable the office to forward the same to the Ministry of Human Resources Development.

It may be noted that the future installment of Maintenance grant for 2007-08 shall be released only on receipt the above information.

Yours faithfully Sd/- (V.K. Mahajan) Deputy Secretary"

7. The case of the petitioners as stated in the writ petition is that they are in occupation of the quarters which belong to the Trust/Foundation as differentiated from the accommodation which belongs to the College, and whose employees the petitioners are. The petitioners claim that the quarters which are allotted to them are not the quarters owned by the colleges which are funded by the UGC, and

therefore allotment to them of the quarters; which also are very old quarters in dilapidated condition; should not disentitle them to HRA. Counsel for the petitioners has hence argued before this Court that since the petitioners cannot be said to be occupying accommodations owned by their employer viz the College, the petitioners cannot be denied payment of HRA and the letter of the UGC dated 09.4.2007 has to be quashed.

8. Though not so pleaded and relief on that basis not prayed in the writ petition, one other aspect is argued by the petitioners before this Court, and the same is in view of the recent judgment of the Supreme Court in the case of State of Punjab Vs. Rafiq Masih, (2014) 10 SCJ 700 . This new aspect is that even assuming the direction of the UGC contained in its letter dated 09.4.2007 is correct, the same in view of the ratio laid down in Rafiq Masih's case (supra) can only have prospective effect i.e. neither the UGC nor the College can claim recoveries with respect to past payments made to the petitioners prior to issuance of the letter of the UGC dated 9.4.2007, inasmuch as those payments were not made illegally to the petitioners but were made validly in terms of the earlier letter of the UGC itself dated 26.4.1972. It is accordingly prayed that, assuming the letter dated 09.4.2007 is correct, yet, no recoveries be effected with respect to HRA already paid prior to 09.4.2007.

9. Whenever a litigant approaches the court, he enforces what is known as a legal right. Legal right arises because of breach/violation of either a provision of the Constitution or a statute or a contract or what is known as a civil wrong or tortious wrong which is the subject matter of action under Section 9 of CPC. A cause of action which can be enforceable in law thus must mean a legal cause of action and a legal right. Hence, if there is no provision either in law or in service rules or contract of the employee with the employer, with respect to entitlement of HRA, merely stating by the petitioners that petitioners are only paying a standard rent or nominal rent and are living in dilapidated quarters cannot mean that the employer/College has to pay HRA to the petitioners/employees. This is all the more so when the College and the University are under the direct control and supervision of the UGC which funds the University and affiliated colleges such as the respondent no. 4/College, and UGC directs non-payment of HRA in the aforesaid factual scenario. In my opinion, therefore, there was no need of even issuing a notice in this writ petition much less deciding this matter on merits, inasmuch as, a reading of the writ petition shows that there is absolutely no mention of what is the relevant HRA rule of the employer; what are the ingredients of that rule which are satisfied by the petitioners so as to seek and continue the claim of HRA i.e. how are the petitioners on satisfying the ingredients of a particular HRA rule are entitled to HRA since the petitioners are only paying nominal rent/standard rent. In fact, it is conceded on behalf of the counsel for the petitioners before this Court that no payment of rent or of any charge is being made by the petitioners to the respondent no. 4/College. Once there is absence of pleading of any legal and valid cause of action, there is thus no existence of a violation of a legal right, and hence the writ petition is liable to

be dismissed in limine, however, since the pleadings of all the concerned parties are available and more so because of the order passed of remand by the Division Bench to decide the matter, I have looked at the matter holistically beyond the technicalities of pleadings, and by taking all necessary documents and the pleadings of the respondents which have otherwise come on record.

10. The first issue which is called for decision in the present case is that are the petitioners entitled to claim HRA on the ground that they are occupying old quarters and that too which are owned not by their employer/College but which belong only to the Trust/Foundation which is running the respondent no. 4/ College i.e. quarters which are occupied by the petitioners do not belong to their College/employer which pays them HRA but the quarters belong to a different entity being the Trust/Foundation which runs the College. In order to determine the aforesaid issue, certain paragraphs containing the averments of the UGC/ respondent no. 2 in its counter-affidavit being relevant, the same are hence being re-produced as under:-

"4. That at the very outset it is necessary to point out that the Delhi colleges whether administered by a Trust or otherwise, are funded and maintained by Universities Grants Commissioner. Some of the colleges receive 100% maintenance grant from the University Grants Commission whereas the Trust colleges received 95% maintenance grant from the UGC. It is necessary to point out that there are 21 Trust colleges affiliated to University of Delhi. All the trust colleges are receiving 95% maintenance grant from UGC. A chart indicating the Delhi colleges and the percentage of grant being received by them from UGC is annexed herewith and being marked as ANNEXURE.R.1.

5. That it is further submitted that initially the commission appointed a Committee to consider the question of fixation of rent and payment of HRA to the allottees of the staff quarters of the colleges affiliated to Delhi University. The said committee after examining the above issues, inter-alia made the following recommendations:-

(a) In case of the staff quarters built with the assistance of the UGC partially or fully the rent should be charged on the basis of 10% of the salary or the standard rent to be fixed whichever is less. The allottees of these houses will not be eligible to the payment House Rent Allowance. Any income that may accrue from such houses, after meeting the expenditure on Taxes, repairs, etc., should not be utilized for meeting the deficit of the college and that such income be used for improvement and expansion of these facilities.

(b) In case of the staff quarters constructed entirely out of the Trust Funds, including the Endowment Fund the Standard (maximum) rent will be fixed after taking into account the return on the Endowment fund so invested on the basis of the investment of the balance of the endowment fund, the expenditure on taxes, repairs including special repairs and provision of depreciation. In this connection, it was noted that the Ministry of Law had held that the Endowment

Fund could be invested in buildings. The rent so fixed will be treated as the approved rent for determination of house rent allowance as payable under the rules in force from time to time.

(c) In the case of the houses constructed out of loans, the standard rent may be fixed keeping in view the expenditure on repairs including special repairs and the repayment of loan. House rent allowance in accordance with the rules in force from time to time will be paid to the persons occupy these houses on the basis of the standard rent, provided however, that after the loan has been fully repaid, the rent chargeable would be as in case of (a) above. The committee further recommended that the colleges should not generally permitted to invest more than 50% of the Endowment Fund for the construction of staff quarters.

6. That subsequently, the above recommendations of the committee was placed before the Commission in its meeting held on 05.04.1972. When after deliberating on the issue, the Commission accepted the above recommendations. Subsequently, the UGC vide its letter No. F1-36/67(CU-II) dated 26.04.1972 circulated the above recommendations/guidelines regarding payment of HRA to employees residing in staff quarters of Delhi colleges. A true copy of UGC letter dated 26.04.1972 is annexed herewith and being marked as ANNEXURE.R.2.

7. That at this stage it is relevant to stated that during 2000-01, the Internal Audit Cell of UGC had given the following comments on the above circular/letter dated 26.04.1972:-

"As per letter, while HRA is not paid to the employees for occupying the house constructed by the management of the UGC fund, the same is allowed and standard rent is fixed according to the given formula if construction of houses are done out of the capital borrowed from Trust Fund or Endowment Fund. The formula given for fixation of standard rent is on reducing balance of the outstanding loans together with other taxes and cost of repairs etc." it went on it give the following comments;

"The instruction of UGC to pay HRA to the employees occupying the accommodation provided by the management on payment of standard rent fixed by them is wrong. The management of the college has a responsibility to look after the welfare of the employees and construction of accommodation and allotment to them on payment of some amount or standard rent of license fee. It is an activity which management is obliged to do within the limits of finance. In such a case, standard rent fixed by the college is not commercial rent or market rent. It is not rent in the strictest sense as applies to a person who takes rent on accommodation and the amount is paid to the owner of the house under owner tenant relationship. Management in this case can not say that they are owners and employees are the tenants. Management in this case are the employers and the occupants of the quarters are employees. Accommodation of the college/ institution are not provided to the outside persons but only to the employees.

Under the rules, an employee living in hostels run by autonomous and semi-

government organizations which are not run on commercial lines are not entitled to HRA. These colleges accommodation are not given on consideration of the rent which can be called as market rent on commercial rent. As per the instructions of Govt. of India, grant of HRA to an employee is subject to the fulfilment of certain conditions as applies to a Govt. servant residing in private rented accommodation.

Accommodation of the management by any stretch of imagination can not be said as private rented accommodation. Therefore, not only the formula fixed by the UGC letter of 1972 to work out the standard rent, which is based on reducing balance, is wrong even the authority to pay HRA on the basis of the standard rent paid is also in contravention of the existing rules. The circular of 1972 needs to be undone with immediate effect. The colleges may be asked to stop payment of HRA to such employees and recover the payment made till date as it is inconsistent with the HRA rules of Govt. of India."

8. That it is further submitted that in view of the above suggestion/recommendation of the Internal Audit of the UGC, the UGC vide its letter dated 8.3.2001 informed the Principal of Delhi colleges as under :-

"....It may be noted that as per Govt. of India rules, grant of HRA to an employee is regulated by certain conditions as laid down in FRSR-IV-HRA/CCA Rules. Accommodation provided by the college which are constructed out of college trust funds cannot be treated as a private rented accommodation for the purpose of drawl of HRA. Therefore, payment of HRA to the employee who are allotted such staff quarters is irregular and needs to be recovered from 8.4.98, the date from which instructions were issued by this office vide this office letter No. F1-25/97 (DC) dated 2.12.98 to discontinue all irregular payments or schemes allowed by colleges but not at part with Govt. of India. In this connection, a circular No. F.1-22/68 (CU) dated 4.5.68 (copy enclosed) issued by this office may be treated as withdrawn. Details of amount, name-wise alongwith designation, to be recovered from 8.4.98 may be worked out on priority basis and necessary arrangements may be made from the recovery under intimation of the Commission. A detailed report containing all information may be furnished to the Commission 31st May, 2001 positively." A true copy of the UGC letter No. 1-36/2000 (DC) dated 8.3.2001 is annexed herewith and being marked as ANNEXURE.R.3.

9. That subsequently the UGC vide its letter dated 21.1.2002 and 27.3.2002 further requested some of the Delhi colleges (as per the attached list) to discontinue the payment of HRA to the allottees of staff quarters constructed out of college trust fund as also to furnish a detailed report indicating amount recovered from allottees (namewise alongwith designation) w.e.f. 8.4.1998. A true copy of the UGC letters No. dated 21.1.2002 and 27.3.2002 is annexed herewith and being marked as ANNEXURE.R.4.

10. That in the circumstances, in response to the above letter of the UGC, some

of the Delhi colleges sent their response which are extracted as under:-

i) Institute of Home Economics, SGTP Khalsa College (Day) and Kirorimal College have stated that they have stopped making payment of HRA to the employees who have been allotted staff quarters and the process of recovery w.e.f. 8-4-98 has been initiated.

ii) Maitreyi College, Daulat Ram College, Gargi College, Kamla Nehru College and Miranda House have stated that they are not paying HRA to the allottees of staff quarters.

iii) Trust colleges such as Ramjas College, Sri Ram College of Commerce, Lady Shri Ram College for Women, St. Stephen's College, IP College for Women, Jesus and Mary College and Janki Devi Mahavidyalaya have stated that the condition is not applicable to their colleges as the quarters were constructed by the college foundation fund/endowment fund and are not Govt./UGC accommodations.

iv) Atma Ram Sanatan Dharam College, Guru Govind Singh College of Commerce, Mata Sundri College for Women and PGDAV College (Day) have stated that they are not having staff quarters.

v) Ramjas College has stated in its letter dated 5-4-2002 that the other colleges like St. Stephen's and Hindu were utilizing the income from staff quarters to meet 5% management share towards maintenance of the college. Due to the financial crunch of Ramjas foundation, the management has decided to meet 5% management contribution from the income of staff quarters. A true copy of the response/letters received from various colleges are annexed herewith and being marked as ANNEXURE.R.5 "colly".

11. That subsequently the UGC again vide its letter dated 18.7.2006 requested that the 21 trust maintained colleges to inform the UGC as to whether the colleges paying HRA to the allottees of the staff quarters. A true copy of the UGC letter dated 18.7.2006 is annexed herewith and being marked as ANNEXURE.R.6.

12. That subsequently in view of a D.O. letter No. F.2898/FA(HRD) 2006 dated 3.8.2006 addressed to Secretary, UGC pertaining to HRA paid in Delhi colleges, the UGC vide its letter dated 19.9.2006 forwarded a status note relating to grant of HRA to employees who have been allotted houses by the Delhi colleges, to the Joint Secretary, Ministry of Human Resource Development, Government of India. Thereafter, the Ministry of Human Resource Development, Government of India vide its letter dated 2.1.2007 requested the UGC to confirm that no employee having accommodation in the colleges is paid HRA. Further, it was also requested that the confirmation sought in the matter may be furnished on priority. A true copy of the UGC letter dated 19.9.2006 and MHRD letter dated 2.1.2007 are annexed herewith and being marked as ANNEXURE.R.7 "colly".

13. That it is respectfully submitted that it is in these circumstances, that the UGC vide its impugned letter No. 1-36/2000 (DC) dated 9.4.2007 informed the

Principal of some of the Trust maintained colleges such as Lady Sri Ram College of Commerce, Janki Devi Mahavidyalaya, St. Stephen's College, Ramjas College, Lady Irvin College, Hansraj College, Hindu College, Indraprastha College etc. to furnish a certificate to the effect that the allottees of the staff quarters is not being paid HRA."

(emphasis added)

11. A reading of the aforesaid paragraphs of the counter-affidavit of the UGC/ respondent no. 2 shows that the argument of the petitioners that the petitioners are entitled to continue to receive the HRA on the ground that the quarters belong to the Trust/Foundation and not the College is a misconceived argument inasmuch as the undisputed position which emerges from record is that even colleges such as the respondent no. 4 which are run by the Trust/Foundation, they also receive as much as 95% of funding from the Ministry of HRD through UGC. Therefore, in my opinion, it is not permissible to make a distinction between an accommodation belonging to a Trust/Foundation from the accommodation belonging to the College inasmuch as both the College and the Trust run College are ultimately financed to the extent of 95% by the UGC. Therefore even for the sake of arguments; (and though this position is in a way disputed by the UGC that there is a distinction between the accommodations owned by the Trust/Foundation and the accommodations owned by the College) the petitioners can seek to draw the distinction, but, the respondent no. 4/ College is necessarily bound by the directions issued by the UGC, and which directions the UGC is entitled to issue in terms of the University Grants Commission Act, 1956. It bears note that the Supreme Court in its recent judgment in the case of Association of Management of Private Colleges Vs. All India Council for Technical Education and Others, (2013) 5 AD 209 : AIR 2013 SC 2310 : (2013) 6 JT 277 : (2013) 6 SCALE 349 : (2013) 8 SCC 271 : (2013) 3 SCT 195 has held that once the university and the affiliated colleges are funded by UGC, the colleges are necessarily bound by the directions issued by the UGC. These observations were made by the Supreme Court when UGC tried to wash off its hands with respect to colleges which were governed by the All India Council for Technical Education Act, 1987 although they were funded by UGC. The aforesaid observations have been made by the Supreme Court in para 54 of the judgment in the case of Association of Management of Private Colleges (supra).

12. Clearly therefore the respondent no. 4/College was bound by the directions of UGC contained in its impugned letter dated 09.4.2007 including because no service rules have been pleaded or shown to this Court by the petitioners that since they pay nominal rent (actually no rent) and occupy the quarters of the Trust/Foundation, they can in such circumstances continue to receive the HRA. As already stated above, no valid distinction can be drawn by the petitioners between the accommodations owned by the Trust/Foundation and the accommodations which are owned by the College, inasmuch as, 95% of the

funding even with respect to colleges owned by the Trust/Foundation, is done by UGC. Therefore, it is held that the order of the UGC dated 09.4.2007 is valid, binding and operative.

13. The stand of the UGC also cannot be said to be in any manner arbitrary, inasmuch as, the entire concept of HRA is that an employee is incurring rent expenditure in around the market rent because he has not been allotted accommodation by the employer, and he is therefore to be compensated by payment of HRA. Once however accommodation is effectively given by the employer through the Trust/Foundation which is running the College and which is financed to the extent of 95% by the UGC, and since only a nominal amount of standard rent would be paid (and in fact conceded on behalf of the petitioners that no amount whatsoever is being paid), surely, the UGC was right in directing non-payment of HRA because otherwise the same would amount to grant of double benefit as rightly argued by the counsel for UGC/respondent no. 2. Payment of nominal rent/standard rent would in fact amount to payment of no rent at all, much less an amount which would be equal to the market rate of rent. Hence, the action of the UGC in issuing the letter dated 09.4.2007 to not pay HRA is correct and based on pure logic of an employee not getting double benefit of an accommodation as also HRA and thus such direction of UGC surely cannot be said to be arbitrary.

14. The second and the next issue which arises is in view of the judgment in the case of Rafiq Masih (supra) and which is that what is the extent of the recovery which can be made by the respondent no. 4/College pursuant to the directions of the UGC contained in the letter dated 09.4.2007. In this regard, I would seek to refer to the averments made by the UGC in its counter-affidavit in para 8 (already reproduced above), and which shows that since 2001, i.e. w.e.f 08.3.2001, UGC has been asking the Delhi University and its affiliated colleges not to give HRA to persons who have been allotted accommodations by the College or the Trust which runs the College. Merely because the respondent no. 4/College and the other colleges may choose to disregard the mandatory directions issued by the UGC from 2001 cannot mean that colleges cannot be directed to effect recoveries of amounts which ought not to have been paid after 08.3.2001. From 08.3.2001, at least in view of the specific and categorical letter of the UGC dated 08.3.2001, it was no longer open to the colleges such as the respondent no. 4/College affiliated to the University of Delhi; and both of which are governed and bound by the directions of the UGC; to continue to pay HRA to its employees. Therefore, for the period from 08.3.2001 onwards only, recoveries can be effected by the respondent no. 4/College from the petitioners but not retrospectively from 1998, in view of paras 11 and 12 of the judgment in Rafiq Masih's case (supra), and which paras 11 and 12 are re-produced as under:-

"11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery of the excess amount paid to employees, came up for consideration, and this Court disallowed the same. These are situations, in

which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

(i). Reference may first of all be made to the decision in Syed Abdul Qadir and Others Vs. State of Bihar and Others, (2009) 1 JT 385 : (2009) 1 SCALE 36 : (2009) 3 SCC 475 : (2009) 1 SCC(L&S) 744 : (2009) 3 SLJ 38 , wherein this Court recorded the following observation in paragraph 58:

"58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See Sahib Ram Vs. State of Haryana and Others, (1995) 1 JT 24 : (1995) 1 SCC 18 Supp : (1994) 3 SCR 674 Supp : (1995) 1 SLJ 151 , Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, (1994) 68 FLR 812 : (1994) 1 JT 574 : (1994) 1 LLJ 815 : (1994) 1 SCALE 469 : (1994) 2 SCC 521 : (1994) 1 SCR 700 : (1994) 2 SLJ 99 : (1994) 1 UJ 797 , Union of India (UOI) and Another Vs. M. Bhaskar and Others, (1996) 73 FLR 1676 : (1996) 5 JT 500 : (1996) 4 SCALE 670 : (1996) 4 SCC 416 : (1996) 2 SCR 358 Supp : (1996) 2 SLJ 25 , V. Gangaram Vs. Regional Joint Director and others, AIR 1997 SC 2776 : (1997) 5 JT 385 : (1997) 4 SCALE 92 : (1997) 6 SCC 139 : (1997) SCC(L&S) 1652 : (1997) 3 SCR 1043 : (1997) AIRSCW 2754 : (1997) 4 Supreme 446 , Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, (2007) 207 ELT 3 : (2006) 9 JT 125 : (2006) 10 SCALE 206 : (2006) 11 SCC 709 : (2007) 1 SCC(L&S) 529 : (2006) 7 SCR 58 Supp : (2007) 2 SLJ 8 : (2008) 11 STR 305 , Purshottam Lal Das and Others Vs. The State of Bihar and Others, (2006) 12 JT 581 : (2006) 10 SCALE 89 : (2006) 11 SCC 492 : (2007) 1 SCC(L&S) 508 : (2006) 7 SCR 51 Supp : (2007) 2 SLJ 68 , Punjab National Bank and Others Vs. Manjeet Singh and Another, AIR 2007 SC 262 : (2006) 111 FLR 587 : (2006) 9 JT 247 : (2006) 8 SCC 647 : (2007) 1 SCC(L&S) 16 : (2006) 6 SCR 825 Supp : (2007) 2 SLJ 53 and Bihar SEB v. Bijay Bahadur, (2000) 10 SCC 99."

(Emphasis is ours)

First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir's case (supra) recognized, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the

Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee. In this context, reference may also be made to the decision rendered by this Court in *Shyam Babu Verma and Others Vs. Union of India (UOI) and Others*, (1994) 68 FLR 812 : (1994) 1 JT 574 : (1994) 1 LLJ 815 : (1994) 1 SCALE 469 : (1994) 2 SCC 521 : (1994) 1 SCR 700 : (1994) 2 SLJ 99 : (1994) 1 UJ 797 , wherein this Court observed as under:

"11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330- 560 but as they have received the scale of Rs 330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

(Emphasis is ours)

It is apparent, that in *Shyam Babu Verma's* case (*supra*), the higher pay- scale commenced to be paid erroneously in 1973. The same was sought to be recovered in 1984, i.e., after a period of 11 years. In the aforesaid circumstances, this Court felt that the recovery after several years of the implementation of the pay-scale would not be just and proper. We therefore hereby hold, recovery of excess payments discovered after five years would be iniquitous and arbitrary, and as such, violative of Article 14 of the Constitution of India.

...

...

12. It is not possible to postulate all situations of hardship, which would govern

employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group "C" and Group "D" service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

(Only the italicised portion is emphasised by me)

15. No doubt, in para 12 of the judgment in the case of Rafiq Masih (supra), the Supreme Court has laid down the categories of persons from whom recoveries cannot be made, however, these observations with respect to whom the recoveries cannot be made have necessarily to be read with the binding ratio in para 11, that if a mistake is discovered within five years then recoveries can be effected and assuming that the mistake was not discovered within five years even thereafter the mistake can be corrected i.e. mistake can be rectified by stopping future payments and which were being wrongly made earlier. Thus from the date when the order of the UGC was passed in March, 2001 by issuing of the letter dated 08.3.2001, no further payments could have been made, because HRA payments were in violation of the applicable guidelines, circulars and notifications which the UGC was entitled to issue. However, for the period before 08.3.2001, the ratio of paras 11 and 12 of the judgment in the case of Rafiq Masih (supra) will apply because the mistake of wrong payment of HRA in the present case was not discovered within five years, and in fact petitioners without any default on their part and without any misrepresentation on their part continued to receive HRA. There is even no question of any misrepresentation by the petitioners because as stated above UGC itself had authorized payment of HRA in terms of its letter/memorandum dated 26.4.1972. Hence, I hold that the impugned order dated 09.4.2007 will only be effective from 08.3.2001 and not retrospectively before this date, and no recoveries can be made against the petitioners for any HRAs paid to them prior to 08.3.2001.

16. The writ petition is accordingly dismissed, however, subject to the aforesaid observations of disentitlement of the respondent no. 4/College or the UGC to cause recoveries to be effected against the petitioners for the period prior to 08.3.2001. No costs.