
(2003) 07 JH CK 0081
In the Jharkhand High Court
Case No : CWJC No. 3560 of 1997 (R)

John Kujur

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226
House Rent Allowance Rules, 1980 — Rule 5

Citation : (2003) 3 JCR 722

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.M. Sharma, for the Appellant; Atanu Bannerji, J.C. to G.A., for the Respondent

Judgement

Tapen Sen, J.—Heard Mr. M.M Shar-ma, learned counsel for the petitioner and Mr. Atanu Rannerji, J.C. to G.A.

2. The petitioner in the instant case has prayed for quashing of the order dated 04.09.1997 issued under Memo No. 68 as contained at Annexure-3 whereby and whereunder House Rent Allowance (hereinafter referred to as H.R.A.) from April, 1997 to July 1997 and City Allowance for the said period amounting to Rs. 11,370/- paid to him during his period of deputation at Raj Nagar Sub Centre has been ordered to be recovered on the ground that the said amount was excess paid to him.

3. The petitioner, through the Amendment Application filed on 26.04.1999, has also prayed for quashing of Letter No. 3, dated 15.01.1998 as contained in Annexure-5 which he has appended to the Supplementary Affidavit filed on 26.04.1999 whereby and whereunder the respondent No. 4 has asked the petitioner to show cause as to why action be not taken against him for filing the instant Writ Application without seeking his prior permission as such conduct was punishable and amounted to misconduct. In the Amendment Application, the petitioner has prayed for quashing of that order and has also prayed for quashing

of Annexure-6 which was brought on record by the petitioner through the same supplementary affidavit whereby and whereunder the petitioner has been sought to be transferred by order dated 03.06.1998 from Raj Nagar, Singhbhum (West) to Bish-nugarh in the District of Hazaribagh.

4. From the facts pleaded, it appears that on or about 24.09.1992, the petitioner was deputed to the Rajnagar Block in the District of Signbhum (West). Although he joined the said place, yet during the period of the deputation, he was always paid salary from the Jamshedpur Office. At paragraph-3 of the supplementary affidavit filed by the petitioner on 13.04.1999, it has been stated that after deputation he was allowed to continue to draw salary from the Jamshedpur office and he also retained his rental house a Jamshedpur during his period of deputation and his family members also resided at Jamshedpur. It has also been stated that the petitioner was paid H.R.A. and City Allowance for his not having been provided official accommodation at Jamshedpur. On 04.09.1997, i.e. after a period of almost five years, Memo No. 67 was issued being Order No. 14 whereby and whereunder the deputation of the petitioner was cancelled. Immediately thereafter i.e. by Order No. 15 Memo No. 68 of the same day, the impugned order was passed.

5. Mr. Atanu Bannerji, learned counsel appearing for the State respondents, has submitted that since the petitioner continued on his deputed place beyond a period of six months and therefore, whatsoever amount that was paid to him towards H.R.A, and City Allowance, was an amount that the petitioner drew in excess and therefore, he was bound to refund the same. He submits that even if no official accommodation was provided to the petitioner at the place of deputation, it was the duty of the petitioner to have taken a house on rent but he did not do so and continued to occupy the house at Jamshedpur and therefore, as per the H.R.A. Rules, 1980 the respondents have correctly passed the order. Mr. A. Bannerji draws attention of this Court to Rule 5 (viii) of the aforementioned rule which reads as under :--

^^5 (viii) iqjkus LFkku ij] tks ljdkjh lsod dks ljdkjh vkokl ugha jgrk gks vkSj LFkkukarj.k gksus ij og viuk ifjokj iqjkus LFkku ij gh NksM+ nsrk gks] D;ksafd u, LFkku ij mlus fdjk, ij edku ugha fy;k ;k mls dksbZ ljdkjh vkokl vkoafVr ugha fd;k x;k] rks og u, LFkku ij izHkkj xzg.k djus dh frfFk ls Ng ekg rd ;k fdjk, ij edku ysus rd ;k ljdkjh vkokl vkoafVr gksus rd] tks Hkh igys gks] edku fdjk;k Hk?kk ikus dk gdnkj gksxk A ,sls ekeys esa edku fdjk;k Hk?kk dk fofu;eu] fu;e 3 ds usoa/kuksa ds vuqlkj dk;Z LFky ds vk/kkj ij edku fdjk;k Hk?kk dh gdnkfjr ij /;ku fn, oxSj] fuEukfdr :i esa fd;k tk,xk A

(i) u, LFkku ij izHkkj xzg.k dh frfFk ls nks ekg rd mlh nj ij ftl nj ij iqjkus LFkku ij fn;k x;k Fkk A

(ii) vxys pkj ekg rd iqjkus LFkku ij mlds }kjk ftl ij ls fy;k tkrk Fkk ;k u, LFkku ij mlds }kjk fdjk, ij edku ysus dh n"kk esa tks vf/kdre mls vuqekU; gksrk] nksuksa esa tks Hkh de gks A

nksuksa gh n"kk esa bu mica/kksa ds v/khu edku fdjk;k Hk?kk ml frfFk ds ckn vuqekU; ugh gksxk ftl frfFk dks og u, LFkku esa fdjk, ij edku ys ys ;k mls ljdkjh vkokl vkoafVr dj fn;k tk, A**

6. Upon perusal of the aforementioned Rule 5(viii), it is apparent that a transferee who did not have official accommodation at his old place and who leaves his family to continue to occupy accommodation other than official accommodation at the old place of posting because no official accommodation is provided in his new place of posting or he does not take a house on rent on that new place of posting then, in that event, he would be entitled to H.R.A. for a period of six months either from the date of taking over of charge at that new place of posting or taking a house on rent which ever was earlier.

7. From the pleadings made in the instant Writ Application as also from the counter affidavit, it is apparent that the petitioner was allowed to continue to be on deputation from 1992 to 1997 i.e. for almost five years. No action appear to have been taken from the side of the respondents against the petitioner during the aforementioned period and on the contrary, he was allowed to continue to withdraw H.R.A. and City Allowance. As per the aforementioned rule, the permissibility to receive the H.R.A. and City Allowance is only to the extent of six months. The petitioner being a Government servant is expected to know the existence of the aforementioned rule. Whatever amount, therefore, that he has drawn beyond the period of six months obviously amounts to an excess amount and therefore, the respondents were justified in passing the order asking him to refund the same.

8. Consequently, this Court does not find any illegality with the impugned order as contained in Annexure-3. Similarly, after cancellation of deputation, if the petitioner had been transferred, the same cannot also be interfered with as it does not appear that the order of transfer was passed either as a measure of punishment or was per se malafide. It is now a well known concept of law that unless an order is proved to be either malafide or punitive in nature, a Government employee cannot be allowed to contest an order of transfer because the Government has the right to transfer its employees wherever and whenever it likes. This Court, therefore, does not find any reason to interfere with the order as contained in Annexure-6. So far as Annexure-5 is concerned, and which appears to have been issued by the respondent No. 4 (i.e. the Assistant Agronomist Adoptive Research Centre, Baliguma, Jamshedpur-12) calling upon the petitioner to show cause as to why the petitioner should not be proceeded against departmentally for having filed the instant Writ Application which, according to him was a grave misconduct, this Court is clearly of the opinion that the said officer has totally and completely overstepped his jurisdiction. The act of a person in moving the High Court under Article 226 is not a misconduct and no person, how-so-ever high he may be in the echelons of the Government, has the right to consider himself to be above the processes of the High Court. He had no business to issue the aforementioned notice dated 15.01.1998 asking the

petitioner to show cause. In fact by issuing the said order, it is the respondent No. 4 who has committed grave misconduct and gross dereliction of duties in as much as this order virtually amounts to threatening a person and amounts to preventing an employee from seeking redressal of his grievances before the High Court. Such conduct, therefore, is deprecated in the strongest possible terms and Annexure-5 is accordingly quashed.

With the aforesaid observations and directions, this Writ Petition is disposed off. There shall however be no order as to costs.