
(2003) 01 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 951 of 2002 with Special Civil Application No. 11746 of 2000 with Special Civil Application No. 970 to 1024 of 2002 with Special Civil Application No. 11736 of 2002

K.B. Zala

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 13-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2003) 23 GLH 210

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Priti Pandya for Petitioners Nos. 1-8 in Special Civil application No. 951 of 2002, Ms. Priti Pandya in Special Civil application No. 11746 of 2000 and Special Civil application No. 970 of 2002, for the Appellant; S.A. Desai for Respondent No. 2 in Special Civil Application No. 951 of 2002, Government Pleader for Respondent No. 1 in Special Civil Application No. 11746 of 2000 and Special Civil Application No. 970 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

Jayant Patel, J.—Rule in all petitions except SCA No. 11736/02 which was already admitted earlier comprising of this group as per the order, dated 11-12-01 passed by this Court (Coram : H.K. Rathod, J.) Ms. Manisha Shah, LD. AGP appearing with Mr. A. D. Oza, LD. GP waives service of rule on behalf of respondent No. 1 and Mr. Desai appearing on behalf of respondent-Gujarat Agricultural University and its officers who are concerned respondents in these matters waives service of rule on their behalf. With the consent of both sides matters are taken up for final hearing today.

2. The short facts of the case are that the petitioners who are employees of Gujarat Agricultural University have approached this Court praying for directions to the respondent-authorities to pay House Rent Allowance ("HRA" for short) at the rate of 15% of the basic pay. The contention raised on behalf of the

petitioners is that the State Govt, had issued a Govt Resolution, dated 15-12-1975 and in the said resolution condition No. iii upon which the reliance is placed and the same is as under :

(iii) Government servant whose place of duty is in the proximity of a qualified city and who of necessity have to reside within the city may be granted House Rent Allowance in that city provided that :

(a) The distance between the place of duty and the periphery of the municipal limits of the qualified cities does not exceed 8 KMs;

(b) The staff concerned have to reside within the qualified city out of necessity, i.e. for want of accommodation nearer their place of duty."

3. It is the case of the petitioners that since the place of service is within the vicinity of 8 KMs distance from the municipal limits of the next city the petitioners are eligible for 15% HRA. It is also the further alternative case of the petitioners that the resolution, dated 18-5-2000 of the State Govt, of cancelling and superseding the earlier resolution, dated 15-12-1975 is illegal and also discriminatory and violative of Articles 14 and 16 of the Constitution of India.

4. It has been submitted by Mr. Pandya on behalf of the petitioners that by the impugned resolution, dated 18-5-2000, the petitioners who are situated at par with the other employees of the University or of the State Govt, are being discriminated inasmuch as since no residential houses are available at the place where they are required to discharge their duties the petitioners are compelled to stay at the nearest city and they have to bear the burden of expense of house rent. The case of the petitioners is that they are similarly situated with the other employees of Gujarat University who are working in the nearest city area and, therefore, the petitioners should also be paid HRA at the rate of 15% of their basic pay.

5. On behalf of the State Govt, as well as on behalf of the respondent-Gujarat Agricultural University, Ms. Manisha Shah, Ld. AGP and Mr. Desai have respectively submitted that the resolution, dated 15-12-1975 is superseded and the said aspect is recorded in the resolution, dated 18-5-2000. It has also been submitted on behalf of the respondents that there is no question of discrimination because the petitioners cannot be said to be similarly situated with the employees who are serving in the city area. A reliance is also placed upon the judgment of the Apex Court in the matter of *The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others*, .

6. The first contention of the petitioners that they are entitled to get HRA at the rate of 15% on the basis of resolution, dated 15-12-1975 in my view deserves to be rejected on the face of it. As observed earlier the resolution, dated 15-12-1975 is superseded and cancelled by the resolution, dated 18-5-2000 and once the resolution dated 15-12-1975 is superseded and cancelled by the State

Govt, as per its resolution, dated 18-5-2000, the petitioners cannot claim 15% HRA on the basis of resolution, dated 15-12-1975 which is superseded and cancelled. Therefore, said contention of the petitioners must necessarily fail.

7. The aforesaid takes me to examine the second alternative contention raised on behalf of the petitioners that the resolution dated 18-5-2000 is arbitrary or discriminatory. In my view, it cannot be said as arbitrary because normally the HRA payable to any employee is in the nature of reimbursement or compensation for providing accommodation to employee concerned. If the employee is serving in a village area he may be required to pay less amount in comparison to the employee serving in the city area for the purpose of housing accommodation for himself and his family members. The major purpose of HRA is with a view to see that the employee concerned may be in a position to occupy a house for himself and his family members. It cannot be said that the situation in village or a small centre would be the same in comparison to the city of corporations area. Therefore, if the State Govt, in exercise of its powers has taken decision of not continuing with the provisions of resolution, dated 15-12-1975 for the purpose of modification of HRA on the ground that only the employees working in the Urban Agglomeration which is an adjacent area to the corporation limits of the city would be entitled to 15% HRA and not the employees outside therefrom, it cannot be said that such decision of the State Govt, would be arbitrary or capricious. In my view it has nexus to be achieved inasmuch as the employees upto the limits of Urban Agglomeration may have to pay more or less at par with the houses available in the corporation of the city area whereas such will not be the case for the house in the small centre or rather the area situated outside the Urban Agglomeration. Therefore, it cannot be said that the action of the State Govt, is without any basis or it has no rational to be achieved therefrom.

8. On the question of discrimination, in my view when the issue is already covered by the decision of the Apex Court in the matter of State of Karnataka (supra) no further discussion would be required. It would be worthwhile to advert to certain observations of the Apex Court in the above referred judgment.

At para 10 the Apex Court observed as under:

"In other words, the respondent-Writ petitioners have built up their plea of violation of Article 14 by taking the limited ground that the same benefit as was conferred by para 2.6 on the employees posted to work in any place situated within a distance of 8 KMs from the periphery of Bangalore City Corporation limits (though not part of Bangalore Urban Agglomeration) ought to have been extended to the employees working within the same peripheral area of Mangalore City Corporation, even if their place of work was outside the Mangalore Urban Agglomeration. We are unable to concur with the High Court that the same yardstick should have been applied to the employees residing within the limits of Bangalore City Corporation and Mangalore City Corporation both of whom are posted to work outside the Urban Agglomeration.

The contention that the criterion of 8 KMs limit from the periphery of municipal limits should be uniformly applied in the case of all urban areas irrespective of their categorization fails to take note of ground realities. Such extension upto 8 KMs be it noted, is peculiar to Bangalore city only. Bangalore which is the capital of State of Karnataka is classified as "A" class city. It cannot stand in comparison with Mangalore city. The manner of spread-over of offices, the pattern of development and the problems relating to housing and habitation will not be the same. If 8 Kms yardstick is prescribed in the case of Bangalore city, it does not mean that the same criterion should be applied for all other cities in the State of Karnataka."

Further, at para 11 the Apex Court observed as under :

"The only other question to be considered is whether the Govt, orders impugned in the writ petitions are liable to be quashed on account of infraction of principles of natural justice. It is true, in a case of this nature where the payment already made is sought to be recovered, thereby visiting the employees with adverse monetary consequences, the affected employees should have been put on notice and their objections called for. But, it is by now well settled that in all cases of violation of principles of natural justice, the court exercising jurisdiction under Article 226 of the Constitution need not necessarily interfere and set at naught the action taken. The genesis of the action contemplated, the reasons thereof and the reasonable possibility of prejudice are some of the factors which weigh with the court in considering the effect of violation of principles of natural justice. When undisputably the action is within the parameters of Rules governing the payment of HRA and CCA and moreover the university authorities themselves espoused the cause of employees while corresponding with the Government, it is difficult to visualise any real prejudice to the opportunity to make representation. We cannot, therefore, uphold the view of the Appellate Bench of the High Court on this aspect of this case."

9. In the above view of the matter, the contention of the petitioners that the resolution, dated 18-5-2000 is violative of Articles 14 and 16 of the Constitution deserves to be rejected and, therefore, rejected. In view of the above discussion, the petitioners would not be entitled to relief of directing the respondent-authorities to pay HRA at the rate of 14% of their pay. Therefore, all these petitions are rejected. Rule in each petition is discharged. There shall be no order as to costs.