

(2005) 10 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10870 of 1990

Kiran Anand Lall, Additional District and Sessions Judge,
Presently Holding Cadre Post of Joint Legal Remembrancer
and Joint Secretary to The Govt. of Haryana

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Punjab Civil Services Rules — Rule 5.35

Citation : (2006) 142 PLR 322

Hon'ble Judges : Ashutosh Mohunta, J

Bench : Single Bench

Advocate : Manohar Lal, for the Appellant; D.S. Nalwa, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Ashutosh Mohunta, J.—The petitioner has filed this petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the orders dated 30.3.1989 (Annexure P8) and 27.9.1989 (Annexure P 10) passed by respondent No.1 whereby her prayer for grant of House Rent Allowance at the rate of 10% of the pay in lieu of the rent-free accommodation has been declined and also for issuance of a writ in the nature of mandamus, directing the respondents to grant her house rent allowance at the rate of 10% of the pay in addition to the house rent allowance already being paid to her on the basis of slab system, for the period during which she remained posted as Joint Legal Remembrancer at Chandigarh as no Government rent free accommodation was provided to her.

2. Briefly, the facts giving rise to this petition are that the petitioner was a member of Haryana Superior Judicial Service (for "HSJS") and she was posted as Joint Legal Remembrancer, which is a cadre post of HSJS, in the Law and

Legislative Department, Government of Haryana, on 29.10.1988. Subsequently, she was designated as Joint Legal Remembrancer and Joint Secretary vide Haryana Government letter dated 30.4.1990. The Chief Secretary to the Government of Haryana (respondent No. 1) vide order dated 31.8.1979 (Annexure P4) conveyed the sanction of the Governor of Haryana for the grant of rent free accommodation to the District and Sessions Judges. Additional District and Sessions Judges, Senior Sub Judges and the Chief Judicial Magistrates posted in the State of Haryana. In the said order it was also made clear that the said Judicial Officers who are not provided the Government accommodation will be entitled to house rent allowance, in lieu of the rent free accommodation, at the rate of 10% of their pay in addition to the house rent allowance already admissible to them. The petitioner was appointed as Joint Legal Remembrancer and posted at Chandigarh vide order dated 30.4.1990 issued by respondent No. 1. On her posting as Joint Legal Remembrancer at Chandigarh, neither she was provided with rent free accommodation nor she was grant 10% house rent allowance in lieu thereof in addition to the house rent allowance on slab basis being paid to her, despite the fact that the post of Joint Legal Remembrancer is on the cadre strength of HSJS. An extract of the posts of Haryana Superior Judicial Service has been annexed with this petition as Annexure P2. The petitioner made a representation dated 11.12.1988 (Annexure P6) to the Legal Remembrancer-cum-Secretary to the Government of Haryana (Respondent No. 2) for the grant of House Rent Allowance at the rate of 10% of her pay as was being paid to the other members of the Haryana Superior Judicial Service, such as Additional District and Sessions Judges, which cadre she belonged to at the relevant time. The Legal Remembrancer (respondent No. 2) forwarded her representation with his recommendation in this regard to the Chief Secretary (respondent No. 1). The representation of the petitioner was rejected by respondent No. 1 vide order dated 30.3.1989 (Annexure P8). The petitioner again submitted a representation for the grant of house rent allowance as is admissible to the members of HSJS on 11.8.1979 (Annexure P9). Respondent No. 1 again declined the prayer of the petitioner vide order dated 27.9.1989 (Annexure P10). These two orders dated 30.3.1989 (Annexure P8) and 27.9.1989 (Annexure P10) are under challenge in the present writ petition.

3. It has been contended by the learned counsel for the petitioner that the action of the respondents in denying house rent allowance to the petitioner for the period she remained posted as Joint Legal Remembrancer is discriminatory and arbitrary and is violative of Articles 14 and 16 of the Constitution of India as they have created an unreasonable classification within a homogeneous class of Haryana Superior Judicial Service. It has also been pointed out by the learned counsel for the petitioner that the respondents have now provided rent free accommodation to Shri P.L.Ahuja and Ms. Raj Rahul Garg, Joint Legal Remembrancer, Haryana, with effect from the date they joined as such. A copy of the order dated 23.12.2003 passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Administration of Justice Department, has

been placed on record as Annexure P11.

4. In order to contest the claim of the petitioner, the respondents have filed a detailed written statement wherein it has been contended that while posted as Joint Legal Remembrancer, the petitioner was not entitled to the grant of House Rent Allowance at the rate of 10% of the pay in addition to the House Rent Allowance on slab basis paid to her. It has further been contended on behalf of the respondents that rent free accommodation is admissible only to those District and Sessions Judges and Additional District and Sessions Judges who are posted in the Courts/Field in the State of Haryana. Another contention has been raised on behalf of the respondents that the petitioner was being paid Special Pay of Rs. 500/- during her posting as Joint Legal Remembrancer at Chandigarh. However, this assertion of the respondents has been denied by petitioner by filing a replication to the written statement and the respondents have not contested the denial of the petitioner in this regard.

5. I have heard the learned counsel for the parties and perused the case file meticulously.

6. There is no dispute to the fact that before her posting as Joint Legal Remembrancer, the petitioner was working as Additional District and Sessions Judge in the State of Haryana. There is also no dispute to the fact that the posts of Additional District and Sessions Judge and Joint Legal Remembrancer form part of the Haryana Superior Judicial Service as there is no contradiction on behalf of the respondents to the extract mentioning the cadre strength of Judicial Department in the State of Haryana (Annexure P2). The respondents have also not raised any dispute to the fact that vide order dated 31.8.1979 (Annexure P4) the facility of rent free accommodation was granted to all the Judicial Officers from District and Sessions Judges upto the level of Chief Judicial Magistrates posted in the State of Haryana. In para 2 of the said order it has been mentioned that the "aforesaid Judicial Officers who are not provided with Government Accommodation, will be entitled to house rent allowance in lieu thereof @ 10% of their pay in addition to the house rent allowance already admissible to them subject to the normal conditions governing the grant of house rent allowance." Merely because the petitioner was posted as Joint Legal Remembrancer at Chandigarh, which is the capital city of the State of Haryana, she cannot be denied the benefit of rent free accommodation or the House Rent Allowance at the rate of 10% of her pay in addition to the House Rent Allowance already admissible to her. Before her posting as Joint Legal Remembrancer, she was very much working as Additional District and Sessions Judge in the State of Haryana. As the post of Joint Legal Remembrancer and the Additional District & Sessions Judge form part of the same cadre as per Annexure P2, her posting at Chandigarh cannot be treated as outside the State of Haryana.

7. By applying different yard sticks to the Additional District & Sessions Judges and the Joint Legal Remembrancer while granting the rent free accommodation or 10% of the pay as House Rent Allowance in lieu thereof, the respondents have

made an unreasonable classification within the same class of employees, which is violative of Articles 14 and 16 of the Constitution of India. It is worthwhile to reproduce hereunder the relevant portion of Rule 5.35 of Punjab Civil Service Rules (as applicable to the State of Haryana):-

5.35: In special circumstances for reasons which should be recorded, a competent authority -

(a) may, by general or special order grant rent free accommodation to any Government employee or class of Government employees;

OR

(b) ** ** ** ** (c) ** ** **

As per Rule 5.35(a) *ibid*, the competent authority was within its right to grant rent free accommodation to a class of Government employees, but it cannot create classification within the same homogeneous class of Judicial Officers.

8. Now vide order dated 23.12.2003 (Annexure P11), the respondents have allowed rent free accommodation to Shri P.L.Ahuja and Mrs. Raj Rahul Garg, Joint Legal Remembrancer, Haryana, with effect from the date they joined as such. If these two officers could be granted rent free accommodation during their posting as Joint Legal Remembrancer, there is no point in denying the same benefit to the petitioner, who during her posting as Joint Legal Remembrancer continued to reside in a rented accommodation. If she was not allowed the rent free accommodation at the relevant time, she is very much entitled to the grant of House Rent Allowance at the rate of 10% of her pay at the relevant time in addition to the House Rent Allowance already paid to her.

9. Consequently, I allow the writ petition and grant the House Rent Allowance to the petitioner at the rate of 10% of her pay in addition to the House Rent Allowance already paid to her at the time of her posting as Joint Legal Remembrancer at Chandigarh. The petitioner is also entitled to the grant of interest at the rate of 9% per annum with effect from the date of her eligibility for the grant of rent free accommodation or 10% House Rent Allowance in lieu thereof during the period of her posting as Joint Legal Remembrancer at Chandigarh, till realization. It is ordered that the payment be made to the petitioner within two months from the date of receipt of a certified copy of this judgment.

However, I do not make any order as to costs.