

(2013) 02 CAL CK 0037

In the Calcutta High Court

Case No : M.A.T. 621 of 2012 with C.A.N. 5817 of 2012

Latika Sahu

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 1 CALLT 278 : (2013) 1 CHN 623 : (2013) 137 FLR 659 :
(2013) 137 FLR 539 : (2013) 2 WBLR 271

Hon'ble Judges : Tarun Kumar Das, J;Pranab Kumar Chattopadhyay, J

Bench : Division Bench

Advocate : D.N. Roy, Mr. Ashutosh Pandey and Ms. Sarbani Chakraborty, for the Appellant; Amitesh Banerjee, Manoranjan Jana For the State Ms. Debjani Sengupta and Mr. Ramaprasad Sarkar For the Vidyasagar University, for the Respondent

Final Decision : Allowed

Judgement

Pranab Kumar Chattopadhyay, J.—By Consent of the parties, we have heard both the appeal and the connected application wherein we are to decide mainly whether the appellant/petitioner is entitled to get full House Rent Allowance notwithstanding the fact that her husband is also drawing House Rent Allowance from his employer. The appellant herein was appointed as a Junior Assistant in Vidyasagar University in the year 1989 and subsequently, she was promoted to the post of Senior Assistant. The husband of the appellant is an employee of Indian Oil Corporation and now posted at Paradip in the State of Orissa. In terms of Memorandum being No. 1691-F dated 23rd February, 2009 issued by the Finance Department, Audit Branch, Govt. of West Bengal, the house rent allowance admissible to a Government employee with effect from 1st April, 2009 is 15% of the revised basic pay subject to a maximum of Rs. 6000/- per month. The ceiling of house rent allowance drawn by the husband and the wife together has also been raised to Rs. 6000/- per month. The logic behind the aforesaid ceiling is that the husband and the wife are expected to reside under the same roof and, therefore, house rent allowance if provided to one would also cover the

need of the other.

2. In the present case, the appellant and her husband are unable to share the same roof since the husband of the said appellant is posted at a different place outside the State of West Bengal. The principal questions raised before us for consideration are:-

a) Whether the appellant/petitioner is entitled to get full House Rent Allowance irrespective of the fact that her husband is drawing House Rent Allowance from his Employer.

b) Whether different provisions have been made in the concerned Revision of Pay & Allowance Rules for an employee who lives with his/her spouse in same house with those where the spouse lives in separate accommodation.

3. The learned advocate representing the respondent University Authorities submitted that the employees of Vidyasagar University are governed by the rules regarding grant of House Rent Allowance as provided by the State of West Bengal. The relevant extracts of the existing House Rent Allowance Rules as mentioned in the memorandum no. 1691-F dated 23rd February, 2009 issued by the Finance Department, Govt. of West Bengal are set out hereunder:-

House Rent Allowance - With effect from the 1st April, 2009, the house rent allowance admissible to a Government employee shall be 15% of his revised basic pay i.e. aggregate of the Band Pay plus Grade Pay and NPA, if any, in the revised Pay Structure subject to a minimum of Rs. 6000/- per month. The ceiling of house rent allowance drawn by husband and wife together shall also be raised to Rs. 6000/- per month.

4. Ms. Debjani Sengupta, learned advocate of the University Authorities submitted that there is no separate provision for those employees whose spouse are staying in a separate accommodation. Ms. Sengupta further submitted that no challenge has been drawn to the aforesaid provision regarding grant of House Rent Allowance. Ms. Sengupta further submitted that the provision regarding grant of House Rent Allowance in Revision of Pay & Allowance Rules is clear and specific and the portion of House Rent Allowance to which the petitioner is entitled to is dependant upon the amount of House Rent Allowance drawn by her spouse. The maximum limit of House Rent Allowance drawn by husband and wife together is Rs. 6000/- per month. Petitioner can not import word in between the lines of the Rules so as to interpret it in a favourable manner for getting House Rent Allowance.

5. Mr. Manoranjan Jana, learned advocate of the State Respondents also referred to the aforesaid memorandum dated 23rd February, 2009 issued by the Finance Department, Govt. of West Bengal wherein the ceiling of House Rent Allowance applicable to husband and wife together is Rs. 6000/- per month. Mr. Jana submitted that the University Authorities have rightly permitted House Rent Allowance to the writ petitioner only to the extent of differential sum after taking

into account the House Rent Allowance of the husband upto a ceiling of Rs. 6000/- per month.

6. Mr. D.N. Roy, learned advocate representing the appellant submitted that the Rules & Regulations providing the ceiling limits for the spouses do not mention any provision regarding denial of such benefits to the employee concerned who is compelled to maintain a separate establishment and who does not share a common roof due to their different places of employment.

7. Mr. Roy further submitted that since the Rules & Regulations only prescribe a ceiling limit without specifying the distance between the places of employment of the spouses, such Rules & Regulations cannot be made applicable in case of the appellant to deny the benefits of House Rent Allowance.

8. Admittedly, the appellant and her husband in the present case do not share the common roof since the husband is posted at a different place outside the State of West Bengal. Therefore, the appellant/petitioner herein has been compelled to arrange the accommodation in the State of West Bengal for discharging her duties in the Vidyasagar University. Similarly, the husband of the said appellant has also been staying at a different accommodation in the State of Orissa in order to discharge the duty at Paradip which is his place of employment. In the aforesaid circumstances, the appellant/petitioner is claiming maximum admissible House Rent Allowance notwithstanding the fact that her husband is also employed and receiving House Rent Allowance.

9. The Government of West Bengal has made the specific rule relating to House Rent Allowance and in terms of the said rules, House Rent Allowance is admissible to each government employee in the revised pay structure subject to a maximum of Rs. 6000/- per month. The ceiling of House Rent Allowance has also been prescribed for the husband and wife together employed and receiving House Rent Allowance from the employer. The logic behind the fixation of ceiling of House Rent Allowance is based on the assumption that the husband and wife shall share the common roof while discharging the duties in the respective working place. Both the husband and wife cannot draw House Rent Allowance in respect of a particular accommodation where husband and wife are sharing a common roof for attending their respective places of employment. Therefore, House Rent Rules have been framed wherein provision for ceiling of House Rent Allowance has been mentioned in order to restrict a married employed couple from drawing House Rent Allowance twice in respect of the same accommodation wherein the said married couple under normal circumstances are supposed to reside for attending their respective place of employment. However, the aforesaid ceiling limit cannot be made applicable where the married employed couple are compelled to reside separately in two separate residential accommodation like present case.

10. It is not possible for the appellant to attend the duties from the working place of her husband at Paradip. Therefore, the appellant has been compelled to

arrange a separate accommodation for herself in order to attend the place of employment. Since the appellant has been compelled to arrange an independent accommodation for herself only to attend the place of employment, aforesaid ceiling of employment in respect of the married employed couple cannot be made applicable. The Rules relating to House Rent Allowance should be given an appropriate and reasonable meaning. The ceiling of House Rent Allowance in respect of husband and wife together can be made applicable when the husband and wife are able to share a common roof for the purpose of attending their respective working places and not otherwise. If it is established that the husband and wife are compelled to maintain two separate residential accommodations in order to report to their respective place of employment, question of imposition of the ceiling of House Rent Allowance cannot be made applicable either on the husband or on the wife.

11. In such circumstances, the employee concerned would be entitled to receive House Rent Allowance as admissible under the Rules and no restriction should be made in this regard on the plea that the spouse is also employed and receiving House Rent Allowance. The ceiling of House Rent Allowance can only be imposed on the married employed couple wherein both the husband and wife will be in a position to share a common roof for the purpose of attending the respective places of employment.

12. The learned Single Judge by the impugned judgment and order under appeal did not address the aforesaid issue and failed to take note of the fact that the appellant herein has been compelled to arrange a separate accommodation for attending her place of employment. The Respondent Authorities also never claimed that it is possible for the appellant to attend her place of employment even after sharing a common roof with her husband who is employed at a different place outside the State of West Bengal.

13. For the aforementioned reasons, We are unable to approve the impugned decision of the learned Single Judge and therefore, we set aside the impugned judgment and order under appeal passed by the learned Single Judge and allow both the application as well as the appeal without awarding any Cost.

14. Let urgent Xerox plain copy of this judgment and order duly countersigned by the Assistant Registrar (Court) be supplied to the learned Advocate of the respective parties on usual undertaking to apply for certified copy of the same.

Tarun Kumar Das, J.

I agree.