

(2002) 03 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 9050 of 2001

N.R. Parikh and Others

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 311

Citation : (2002) 22 GLH 657

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : A.M. Parekh for petitioners Nos. 1-10, for the Appellant; A.D. Oza, Government pleader with Ms. Harsha Devani, AGP for respondents No. 1-3, for the Respondent

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—Reduction in the rate of House Rent Allowance ("H.R.A." for short) is the subject-matter in both these petitions. The petitioners in each of these petitions are employees of Vakal ITI, which is situated at Village Dashrath, District: Vadodara. The said Institute is a registered Institute and as averred in the petitions, the said Institute is getting 100% grant from the State Government. It is not in dispute that even though the said Institute is situated at Village Dashrath, which is near to Baroda City, all the petitioners are having their respective accommodation in Baroda City. The petitioners were getting H.R.A. at the rate of 15% of the basic pay for some time. The State Government, subsequently, vide Resolution dated 25-2-2002, reduced the percentage for H.R.A. to 5%. The aforesaid reduction in the H.R.A. from 15% to 5% is challenged by the petitioners on various grounds. It is averred by the petitioners in the Special Civil Applications that the distance between Dashrath Town, i.e. the place where their office is situated, and the Corporation limits of Baroda City is 6.60 K.Ms. It is the say of the petitioners that, initially, they were getting H.R.A. at the rate applicable to the employees serving in Baroda City. Thereafter,

by Resolution dated 20th January, 1998, the said rate was modified and so far as the City of Baroda is concerned, which was coming in "B-I" category of City. H.R.A. was fixed at the rate of 15% of the actual basic pay drawn. Accordingly, by the aforesaid Resolution, dated 20th January, 1998, H.R.A. was revised and as per the revised rate, an employee was entitled to get 15% of the actual basic pay drawn so far as Baroda City is concerned. The benefit of revision of H.R.A. was given from back date, i.e. 1-8-1997. Accordingly, the petitioners, who are residing in the city of Baroda, started getting H.R.A. at the rate of 15% on the basis of the said revised rates prescribed in the aforesaid Resolution dated 20th January, 1998. The aforesaid modification was necessitated in view of the introduction of the revised scale of pay under the Gujarat Civil Services (Revision of Pay) Rules, 1998. It is required to be noted that prior to the said Resolution of 1998, the petitioners were getting H.R.A. at the flat rate on the basis of their scale of pay.

2. As stated earlier, so far as Dashrath Town is concerned, it is situated at a distance of 6.60 K.Ms. away from the Corporation limits of Baroda City. The State Government had passed the Resolution on 15th December, 1975. Certain relevant features of the said Resolution of 1975 are as under:-

Consequent upon the issue of Government orders cited in the preamble, Government is pleased to direct that the conditions for drawal of House Rent Allowance shall be as under :-

1. Areas where. House Rent Allowance admissible:

(i) The limits of the locality within which these orders apply shall be those of the named municipalities or Corporations and shall include such of the sub-Urban municipalities, notified areas or cantonments as are contiguous to the named municipality or corporation or other areas as the State Government may from time to time notify;

(ii) A Government servant whose place of duty falls within the qualified limit of a city shall be eligible for House Rent Allowance irrespective of whether his place of residence is within such limits or outside;

(iii) Government servants 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 admissible 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.

... ..

Since the aforesaid Village Dashrath is situated within the radius of 8 K.Ms. from Baroda City, H.R.A. benefits were given to the petitioners, who are serving at

Dashrath, on the ground that Village Dashrath is situated within the radius of 8 K.Ms. from Baroda City. For the first time, benefit was given to the petitioners in the matter of H.R.A. by way of giving such allowance at the rate of 15% by the Resolution of 20th January, 1998 and as the City of Baroda is classified as "B-I" City, H.R.A. at the rate of 15% of the basic pay was given to the present petitioners and since the place of service was within the radius of 8 K.Ms., the petitioners were also getting the said benefit of H.R.A. at the rate of 15% in view of the said Resolution of 1998.

3. Subsequently, by Resolution dated 25th February, 2000, Government deleted paragraph I(iii) from the Resolution of 15-12-1975. Accordingly, the areas, which are falling within the radius of 8 K.Ms, from the Municipal limit, are not taken care of now by virtue of the said Resolution and the employees, who are serving at such place, which is situated within the aforesaid radius of 8 K.Ms. from the city limit, will not be entitled to H.R.A. at the rate of 15%, which was provided in the earlier. Resolution of 20-1-1998, by virtue of deletion of clause I(iii) by way of Resolution dated 25-2-2000. It is also provided in the said Resolution dated 25-2-2000 that such employees, who were performing duty within the radius of 8 K.Ms. from the city limit, will not be entitled to H.R.A. at the rate prescribed for classified Cities, but they are entitled to H.R.A. at the rate of 5% on the basis of the aforesaid Resolution dated 25th February, 2000, which is at page 26, Annexure "A" in the compilation of Special Civil Application No. 9050 of 2001. The present petitioners, who are serving at Village Dashrath, were getting H.R.A. at the rate of 15% in view of the earlier Resolution of 1998, and now they are paid H.R.A. at the rate of 5% in view of the said G.R. of 2000. On the basis of the said Resolution dated 20th January, 1998, subsequent Circular dated 25th February, 2000, was issued by the Government in its Finance Department. In the said Circular, it is clarified that in view of the Resolution dated 20th January, 1998 of the Finance Department, the employees serving in an office, which is situated within the Urban Agglomeration Area of a Classified City, will be entitled to get H.R.A. at the rate of 15%. However, employees who are serving in an office, which is outside the Urban Agglomeration Area, will be entitled to get H.R.A. at the rate of 5%. "Urban Agglomeration Area" is also mentioned at page 31 and the said area is classified in view of the 1991 Census. So far as the present petitioners are concerned, they are serving at village Dashrath, which is not coming within the Urban Agglomeration Area and in that view of the matter, irrespective of whether they are within the radius of 8 K.Ms. of Baroda City, now they are given H.R.A. at the rate of 5%. The aforesaid Resolution dated 25th February, 2000 is challenged by the petitioners in these petitions on various grounds.

4. The grievance of the petitioners is that since considerable time, they are getting H.R.A. at the rate of 15% and, therefore, according to them, these benefits cannot now be taken away after such a long period. It is also submitted on behalf of the petitioners that Village Dashrath is situated within the radius of 8 K.Ms. from the city limit of Baroda and, therefore, they should be paid H.R.A. at

the rate of 15%, which was paid before passing the Resolution dated 25-2-2000. It is also argued on behalf of the petitioners that H.R.A. at the rate of 15% of the Basic Pay is given to the petitioners under the provisions of the Bombay Civil Services Rules and the aforesaid statutory benefit cannot be taken away by Executive Instructions of the Finance Department. It is, therefore, submitted that the said Resolution dated 25-2-2000 is illegal, arbitrary and without any authority of law and by the said Resolution, the benefit given under the provisions of the Bombay Civil Services Rules cannot be taken away by such administrative fiat.

5. It is also argued by Mr. Parekh, who is representing the petitioners, that at village Dashrath, no housing facility is available and, therefore, they are compelled to reside at Baroda, and, in that view of the matter, the respondents should be directed to continue the said benefit of H.R.A. at the rate of 15%, which was made available to them before passing the said Resolution of 25th February, 2000.

6. Mr. A. D. Oza, learned Government Pleader, on the other hand, has supported the decision of the Government, by which the benefit of H.R.A. is reduced from 15% to 5% so far as the present petitioners are concerned. Learned Government Pleader submitted that so far as fixing the rate of H.R.A. is concerned, the same is changed from time to time by passing various Government Resolutions. It is also submitted that the State Government has decided to give the pay scale of the Central Government employees to the State Government employees and, accordingly, H.R.A. is also fixed on the same rate at which the Central Government employees are entitled to H.R.A. He also submitted that the earlier Resolution of 1975 was misused by the employees and even though housing facilities were available at some places, like Dashrath, the employees used to get H.R.A. at a higher rate and, in fact, they wanted to reside in the City itself. Since it was noticed by the Government that the aforesaid Resolution of 1975 is misused by the employees and since it was difficult to have check on it, ultimately, decision is taken to give H.R.A. to those employees, who are residing within the Urban Agglomeration Area at the rate of 15% and to give H.R.A. at the rate of 5% to all the other employees who are not residing within the Urban Agglomeration Area. He submitted that, initially, those employees who were residing outside 8 K.Ms. from the City limit were not entitled to any H.R.A. at all, but by virtue of the present policy and the Resolution, all the employees will get H.R.A. and nobody will be left out without the said benefit, even if one is residing in a small village, which might not be included in the Urban Agglomeration Area. He, therefore, submitted that the said decision is absolutely rational and is arrived at after taking all the pros and cons into consideration.

Mr. Oza also further submitted that this being a policy decision, which is based on rational basis, cannot be interfered with in a petition filed under Article 226 of the Constitution of India. He, therefore, submitted that the petition deserves to be dismissed since no legal or fundamental right of the petitioners are violated

by the impugned Resolution.

7. I have heard the learned Advocates at length.

The question which requires consideration is whether the percentage of H.R.A., which is made available to an employee, can be changed or revised by the State Government by way of Government Resolution. It is also required to be found out whether the Resolution dated 25th February, 2000 is just, proper and rational.

Before examining this question, in detail, it is worthwhile to refer to Rule 334 of the Bombay Civil Services Rules, 1959. Rule 334 of the aforesaid Rules provides as under:-

334. The following are different kinds of compensatory allowances sanctioned by Government :-

Local Allowance.

House Rent Allowance.

Travelling Allowance (which includes conveyance, horse and tentage allowances).

Plague Allowance.

Clothing Allowance or Uniform Allowance.

Charge Allowance.

Allowance for loss of private practice. Water Allowances.

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Accordingly, so far as H.R.A. is concerned, it is one of the "Compensatory Allowances" sanctioned by the Government and such allowance is paid in lieu of rent free quarter. The principal object for the purpose of giving H.R.A. is to compensate the employee by way of the said allowance, i.e. House Rent Allowance, in view of the fact that the Government may not be in a position to offer rent free accommodation to the employee at the place where he is serving. If the Government is not in a position to offer rent free accommodation, naturally, the employee is required to be compensated by way of House Rent Allowance. There cannot be any fixed rate or quantum in the matter of payment of such compensatory allowance as it can vary from time to time as per the exigencies. Such compensatory allowance, therefore, is not to be considered as part of salary or wages of an employee. Appendix XVII attached with Bombay Civil Services Rules deals with Rules regulating the grant of compensatory local allowance and house rent allowance to non-gazetted Government servants. In the said Appendix XVII, certain rate is also prescribed and so far as Baroda City is concerned, which is clubbed with Kolhapur, Sholapur and Surat, 5% is prescribed towards H.R.A. Under Appendix XVII Clause 3(a), the limits of the

locality within which these orders apply are indicated and so far as Baroda City is concerned, the limit, which is prescribed, is the limit of the named Municipality, including such of the suburban municipalities, notified areas or cantonments as are contiguous to the named municipality and such other areas as the Government of Bombay may from time to time notify.

There is also a provision in Appendix XVII Clause 3(c), wherein it is made clear that H.R.A. shall be admissible to a Government Officer whose place of duty is situated outside the limits of Ahmedabad locality but within a distance not exceeding 8 kilometres from the periphery of such limits. However, in the said Appendix, no such distance of 8 kilometres is mentioned in so far as the Baroda City is concerned, except Ahmedabad. It is not in dispute that so far as the revision in H.R.A. is concerned, such revision was given effect to by various Resolutions issued by the Government from time to time. Even the benefit of H.R.A. at the rate of 15% was given to the petitioners only by way of Government Resolution of 20th January, 1998 itself and not by way of any other Notification or by way of any amendment in the Bombay Civil Services Rules.

As stated earlier, so far as the provisions of B.C.S.R. are concerned, even the rate of 5% was not mentioned in the same and by virtue of subsequent Resolution, the said rate was increased by the Government from time to time.

Considering the aforesaid aspect of the matter, it is not possible to accept the say of Mr. Parekh that once the rates are prescribed in the Bombay Civil Services Rules, which are statutory in nature, the said rate could not have been curtailed or amended by way of Government Resolution unless there is a specific Notification by the Governor of Gujarat in that behalf. As stated earlier, this benefit of H.R.A. at the rate of 15% itself was given to the petitioners by way of Government Resolution dated 20th January, 1998. This H.R.A. at the rate of 15% or any rate of H.R.A. is not at all prescribed in the Bombay Civil Services Rules or in the Appendix attached thereto. In view of the same, the contention of Mr. Parekh to the effect that reduction of H.R.A. from 15% to 5% is without any authority and is contrary to the provisions of B.C.S.R., cannot be accepted. The petitioners themselves having taken advantage of the Resolution dated 20th January, 1998, now cannot contend that unless there is an amendment in the Bombay Civil Services Rules, H.R.A. at the rate of 15% cannot be curtailed by way of Resolution. Even otherwise, as stated earlier, this 15% rate is not prescribed in the Bombay Civil Services Rules and the said benefit is given only by way of Resolution and it is always open for the Government to amend the Resolutions looking to the exigencies.

8. It is required to be noted that an employee is entitled to H.R.A. as long as he is serving at a particular place in the State. Rate of H.R.A. always differs from place to place. Even as per the earlier Resolution of 15th December, 1975, it is provided in Clause I(iii)(b) that the staff concerned have to reside within the qualified city out of necessity, i.e. for want of accommodation nearer to their place of duty. Subsequently, it was realised by the Government that without

following the aforesaid clause to the effect that even though accommodation is available nearer to the place of duty, such employee is voluntarily residing in the city itself, the employee used to draw H.R.A. at the higher rate on the ground that he is residing in a qualified city. Having realised the aforesaid difficulty and having ultimately convinced that the aforesaid G. R. is not followed strictly in its true spirit, it was decided to give go-by to the aforesaid clause of 8 K.Ms. provided in clause I(iii)(a). Instead, considering the shortage of accommodation in a thickly populated area, now it is decided that those employees who are residing within the City or within the Urban Agglomeration Area, are entitled to H.R.A. at the higher rate of 15%, and employees residing in remainder part of the State, should be given H.R.A. at the rate of 5%. The said policy decision, in my view, cannot be branded as arbitrary, illegal, or discriminatory. In the City limit or within the Urban Agglomeration Area, considering the scarcity of housing accommodation, if it is decided to give H.R.A. at the rate of 15% restricting only to that area, the said decision is based on a scientific basis. In an area, which is not a thickly populated one, like Village Dashrath, it is not difficult for an employee to find out housing accommodation at a cheaper rate and, therefore, an employee, whose Office is situated in an area which is not thickly populated and where housing accommodation is available, cannot, still, insist that he will stay only within that City and he should be allowed to draw H.R.A. at the rate of 15% even though it is possible for him to avail of cheaper accommodation in such a rural area.

9. Mr. Oza, learned Government Pleader, has also placed on record a report of the Committee, which was constituted by the Government, when, at an earlier point of time, certain petitions were filed in this. Court and this Court had directed the Government to form a Committee to examine this question. The Report of the Committee, which is on record, has considered the issue in detail. The Committee has observed in its report that clause (I)(iii) of the Resolution of the Finance Department dated 15-12-1975 was misinterpreted by various Departments and the employees were getting H.R.A. at the higher rate on the basis of some wrong interpretation of the said Resolution. The Committee has observed in the report that Clause I(iii) of the Resolution of 15-12-1975 is deleted not with an object to reduce H.R.A., but in order to prevent wrong interpretations, and in order to prevent the employees from taking undue advantage of the said Resolution, the said paragraph was deleted. The Committee has also observed that as per the Resolution of the Finance Department dated 1-6-1987, the H.R.A. was fixed on the basis of the pay scale and H.R.A. was accordingly fixed at a higher rate, but thereafter, since the employees of the State are given pay scale on the basis of the pay scale of the Central Government employees, the said amendment is made in the H.R.A. on the basis of the H.R.A. applicable to the employees of the Central Government. Considering the aforesaid aspect also, i.e. regarding granting H.R.A. at a uniform rate, as compared with the rate applicable to the Central Government, it was found by the Government that the rate of 5% which is at par with the rate

applicable to the Central Government employees is just and proper. The said report is taken on record.

10. On behalf of the respondents, it is pointed out that even in the case of employees serving under the Postal Department, they are getting H.R.A. at the rate of 5% even though such post office is situated within the outskirts of the Baroda City itself in a near distance. It is also submitted on behalf of the State Government that once the benefit of pay scale on the basis of the Central Pay Scale is available to the employees of the State Government, the benefit of H.R.A. also should be given on the same line which is payable to the employees of the Central Government.

11. Considering the aforesaid facts and circumstances of the case, I am of the view that simply because the petitioners were given H.R.A. at the relevant time at the rate of 15% is no ground to continue the said benefits for them indefinitely even though their place of duty is outside the Urban Agglomeration Area of the Baroda City and especially when now the benefit of H.R.A. is available to all the employees in the State, irrespective of whether their place of duty is in the City or within the radius of 8 kilometres of such City. In my view, there is also a scientific reason for restricting the said benefit of H.R.A. at the rate of 15% to the employees serving in offices, which was situated in the Urban Agglomeration Area, which is thickly populated, wherein it is difficult to get cheaper accommodation. In view of this, the aforesaid Resolution of the Government dated 25-2-2000 cannot be branded as discriminatory, arbitrary or illegal in any manner. It cannot be said that the State has violated the mandate of Article 14 or Article 16 of the Constitution by passing the said Resolution. As stated earlier, the rates of H.R.A. are always flexible and changed from time to time by way of various Resolutions of the State Government. By passing the said Resolution, the basic compensatory allowance, which is provided in the B.C.S.R., is not taken away in any manner. It is also required to be noted that, earlier, before passing the Resolution of 25th January, 1998, the petitioners were getting H.R.A. at the rate of 7%, which was subsequently increased to 15%. Even the said benefit was given by way of Government Resolution of 1998. Similarly, now, by the Government Resolution, the said benefit is reduced from 15% to 5% so far as the present petitioners are concerned.

12. Mr. Parekh, however, submitted that the petitioners are not challenging the reduction of rate from 15% to 5%, but, in his submission, the geographical distance of 8 K.Ms. should not have been amended by the Resolution dated 25-2-2000. In my view, there is no substance in the said argument firstly because the Government, having realised the fact that this provision of 8 K.Ms. is misused by the employees, and even though housing facility is available within a distance of 8 K.Ms., still, the employees used to get H.R.A. at a higher rate by sticking to a particular city limit. In order to prevent such abuse, ultimately, it was decided to give a go-by to the said stipulation of 8 K.Ms. The said decision is based on sound principle. In that view of the matter, it is not possible to accept

the say of Mr. Parekh that the distance of 8 K.Ms. was required to be maintained for the purpose of giving benefit of H.R.A. The distance part, which is provided in the earlier Resolution, therefore, can always be considered and amended from time to time considering the need and exigency. By passing such Resolutions, it cannot be said that any statutory provision of B.C.S.R. is given a go-by.

13. On behalf of the petitioners, reference was made to certain decisions of the Apex Court. Mr. Parekh relied upon the decision of the Apex Court in D.S. Nakara and Others Vs. Union of India (UOI), . The aforesaid decision is in connection with the classification in revised pension formula between pensioners on the basis of date of retirement specified in Memoranda issued by the Finance Department. The said classification was found to be arbitrary and violative of Article 14 of the Constitution by the Apex Court. The aforesaid decision was in connection with the revision of pensionary benefits. In paragraph 15, it has been observed by the Apex Court as under :-

... ..

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.

... ..

So far as the facts of the present case are concerned, as stated earlier, on valid ground, which- is highlighted in the affidavit-in-reply, as well as during the submissions of the Government Pleader, it was necessitated to amend the earlier Resolutions by forming a uniform policy to give H.R.A. at a particular rate so far as the employees serving in the City or in the area which is under the Urban Agglomeration Area and at a particular rate to the employees who are serving in rest part of the State. The said classification cannot be said to be arbitrary, discriminatory or irrational in any manner.

8th March, 2002

Mr. Parekh has also relied on the decision of the Apex Court in Bhagwan Sahai Carpenter and others Vs. Union of India and another, . In the said judgment, the Apex Court was concerned with the question about allowing higher scale of pay to the employees of some trades from an earlier date and to members of other trades from a later date. The said action was found to have been discriminatory. In the instant case, there is no question of any discriminatory treatment on the part of the respondent authority, as, ultimately, on the basis of policy decision, revision in the H.R.A. is effected and the rate of H.R.A. are changed.

Mr. Parekh has also relied upon the judgment of the Apex Court in State of T.N. represented by Secretary, Housing Deptt., Madras Vs. K. Sabanayagam and

Another, . Reference is made to the said judgment to substantiate the argument that there is excessive delegation and that the statutory provisions should not have been abridged, curtailed, taken away or amended by way of Government Resolution. Learned counsel also relied upon the observations of the Apex Court in the said judgment regarding opportunity of being heard. In the instant case, as stated earlier, the H.R.A. rate is fixed and changed from time to time by issuing G.Rs., by which the petitioners have got benefit when it was revised to 15% from 7.50%. This is a general decision taken by way of policy decision. It is, therefore, not necessary to hear each and every employee in the matter of fixing particular rate of H.R.A. Considering the facts of the present case, therefore, the principle laid down by the Apex Court in the aforesaid case is not applicable to the facts of the present case, as the facts of the said case were totally different altogether.

Mr. Parekh has relied upon the decision of the Supreme Court in *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, . In the aforesaid judgment, it has been found by the Apex Court that by way of retrospective amendment, vested or accrued rights of the Government employees cannot be taken away. It has been observed by the Apex Court that if by way of retrospective amendment of the statutory Rules, pensionary rights of the employees, who already stood retired on the date of the Notification are adversely affected, such amendment is invalid. It is required to be noted that so far as the present Resolution is concerned, admittedly, it is not given any retrospective effect at all. The aforesaid ruling, therefore, hardly helps the petitioners in any manner. Mr. Parekh, however, argued that since the petitioners are getting H.R.A. at the rate of 15% since so many years, that benefit cannot be taken away till they are in service. This argument is difficult to accept and in my view, the benefit of house rent allowance or any such allowance can always be changed from time to time looking to the exigencies.

Mr. Parekh has also relied upon the decision of the Apex Court in *C. V. Parmar & Ors. v. State of Gujarat & Anr*, 1994 (2) GCD 317. In the aforesaid case, this Court was concerned with the question of allotment of plot to the employees serving at Gandhinagar and outside Gandhinagar. This Court has found that if an employee serving at Gandhinagar and owning residence at Ahmedabad are allowed benefit under the Resolution in the matter of allotment of Government plots, then disallowing the same benefit to the petitioners who are owning residence at Gandhinagar has no valid and reasonable ground for discrimination. Considering the facts of the case, the Court found that the aforesaid decision taken by the Government was arbitrary and violative of Articles 14 and 16 of the Constitution of India. In the said judgment, the Court has also given reasoning as to how that policy is discriminatory. In the instant case, the State Government has justified the decision taken, by pointing out, in detail, as to how it was necessary to amend the earlier policy. The decision taken in the instant case, cannot be branded as discriminatory or violative of Articles 14 and 16 of the Constitution of India. In my view, the aforesaid decision is taken on valid reasons.

Mr. Parekh has also relied upon certain observations in the Book of Swamy, which is in connection with General Rules and Orders in the matter of H.R.A. and C.C.A. the relevant part of the same reads as under:-

3. (a)(i) The limits of the locality which within these orders apply shall be those of the named Municipality, or Corporation and shall include such of the suburban Municipalities, notified areas or cantonments as are contiguous to the named Municipality or Corporation or other areas as the Central Government may, from time to time, notify.

(ii) The orders contained will automatically apply/cease to apply to areas which may be included within/excluded from the limits of the named Municipality or Corporation by the State Government concerned, from the date of such inclusion/exclusion.

(b)(i) A Government servant whose place of duty falls within the qualifying limits of a city shall be eligible for both the Compensatory (City) and House Rent Allowances, irrespective of whether his place of residence is within such limits or outside.

NOTE 1. - Absence from place of duty during holidays, except those affixed to leave, will not affect the eligibility for the Compensatory (City) and House Rent Allowances.

NOTE 2. - For the period of tour, a Government servant entitlement to these allowances shall be regulated with reference to his headquarters.

(ii) Government servants 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 the Compensatory (City) and House Rent Allowance admissible in that city. The administrative Ministries/Departments, and the Comptroller and Auditor-General in respect of staff serving under him, are authorised to sanction the allowances under this clause provided they are satisfied that -

(1) the distance between the place of duty and the periphery of the municipal limits of the qualified city does not exceed 8 km; and

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

... ..

However, it is required to be noted that on certain eventuality, as mentioned in clause 3(b)(ii) below Note 2 that the Administrative Ministries/Departments and the Comptroller and Auditor-General in respect of staff serving under him, are authorised to sanction the allowances mentioned under the said clause on satisfying two conditions regarding limit of 8 kms. and the staff concerned have to reside within the qualified city out of necessity, i.e. for want of accommodation nearer their place of duty. Mr. Oza has submitted that only as a special case and on the recommendation of the concerned Department Head, such H.R.A. is

permissible as mentioned in the said Rules. In the facts and circumstances of the case, the Government, having realised that the employees are residing within the qualified city limit, even though housing facility is available in rural area, which is outside the city limit, still, they have tried to get benefit for all these years and considering the aforesaid aspect, ultimately, the Government decided to amend the said rates. In my view, such amendment cannot be branded as discriminatory or arbitrary. Even otherwise, as stated by Mr. Oza, so far as the Central Government employees are concerned, even they getting H.R.A. only at the rate of 5% if the place of employment is situated outside the limit of the qualified city, for which he has also relied upon the instance of a post office, to substantiate his say. It is, therefore, not possible to accept the argument of Mr. Parekh.

14. Mr. Oza, learned Government Pleader, has also relied on certain judgments of the Apex Court.

Mr. Oza has relied on the decision of the Apex Court in *M.P. Oil Extraction and Another Vs. State of M.P. and Others*, . The Apex Court has observed in paragraphs 43 and 44 as under :-

... ..

43. It has been held by the High Court that the industrial units which were commissioned on the invitation of the State to undertake oil extraction operation on the assurance of supply of sal seeds by the State, stand on a separate footing. Such decision of the High Court though challenged before this Court, has not been upset. The distinctive features between the industrial units set up at the instance of the State Government and the old existing units are based on an objective criteria. Therefore, the said two classes of industries are not similarly circumstanced. Article 14 prohibits discrimination amongst the equals but it should be appreciated that Article 14 has inbuilt flexibility and it also permits different treatment to unequals. It may also be noted here that Bastar Oil Mills is situated at Jagdalpur which is admittedly a backward and tribal area. The special treatment given to Bastar Oil Mills by assuring supply of 20,000 MT of sal seeds under the impugned agreement cannot be held to be per se illegal and arbitrary. Classification on the basis of geographical situation has a rational basis and has been recognised by this Court as indicated in the decisions referred to hereinafter. It may also be noted that the agreement of M/s Sal Udyog was terminated by the State Government for which reference to arbitration was made in terms of the agreement between the parties. Initially, the dispute was referred to the arbitration of a retired Judge of this Court but since the same could not be completed within the time-frame, the arbitration was later on referred to a District Judge. During the pendency of arbitration proceedings, the industrial policy of the State Government was reviewed by a high-powered committee formed by the State Government. Such committee considered the question of continuance of protective measures to the selected industries by assuring supply of sal seeds by the State Government. The case of M/s Sal Udyog was also

considered by such high-powered committee and the committee recommended in favour of M/s Sal Udyog. Thereafter, the State Government renewed the agreement with the usual renewal clause. Such action of the State Government cannot be held to be illegal or arbitrary.

44. The renewal clause in the impugned agreement executed in favour of the respondents does not also appear to be unjust or improper. Whether protection by way of supply of sal seeds under the terms of agreement requires to be continued for a further period, is a matter for decision by the State Government and unless such decision is patently arbitrary, interference by the Court is not called for. In the facts of the case, the decision of the State Government to extend the protection for further period cannot be held to be per se irrational, arbitrary or capricious warranting judicial review of such policy decision. Therefore, the High Court has rightly rejected the appellant's contention about the invalidity of the renewal clause. The appellants failed in earlier attempts to challenge the validity of the agreement including the renewal clause. The subsequent challenge of the renewal clause, therefore, should not be entertained unless it can be clearly demonstrated that the fact situation has undergone such changes that the discretion in the matter of renewal of agreement should not be exercised by the State. It has been rightly contended by Dr. Singhvi that the respondents legitimately expect that the renewal clause should be given effect to in usual manner and according to past practice unless there is any special reason not to adhere to such practice. The doctrine of "legitimate expectation" has been judicially recognised by this Court in a number of decisions. The doctrine of "legitimate expectation" operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right.

... ..

Mr. Oza, submitted that there is a reasonable classification in the matter of payment of H.R.A. now by fixing particular rate in the thickly populated area and fixing uniform rate so far as the rest of the area, where cheap housing accommodation is possible so far as place of service of a particular employee is concerned.

Mr. Oza has also placed reliance on the decision of the Apex Court in Union of India and others Vs. Makhan Chandra Roy, . It has been observed by the Apex Court in paragraph 2 as under :-

... ..

2. The respondent herein was working as a Laboratory Assistant under Dandakaranya Development Authority. He was granted pay scale of Rs. 260-400. After the recommendations of the Fourth Pay Commission, the Central Government promulgated the Central Civil Service Revised Pay Rules, 1986. As per these Pay Rules, the respondent's pay scale with effect from 1-1-1986 worked up to Rs. 950-1500. According to the respondent, he was entitled to a still higher pay scale and as that was not granted to him, he moved the Tribunal

by original application. The Tribunal after hearing the contesting parties took the view that the respondent was not entitled to any higher pay scale only on the ground of equal pay for equal work. That a higher pay scale given to Laboratory Assistants both in the Ministries of Defence and Railways could not automatically be given to the respondent as he was a mere matriculate having only 5 weeks" training in the Central Laboratory of Indore, while those Laboratory Assistants in the aforesaid Ministry of Defence and Railways were having better educational qualifications. On the aforesaid finding reached by the Tribunal on facts, the OA should have been dismissed. Instead, the Tribunal perhaps thinking that because the petitioner had moved the Tribunal, he should not go empty-handed and must be given some relief from somewhere, took the view that because the Auxiliary Nurses and Midwives who were also earlier getting two scales of pay of Rs. 260-350 and Rs. 260-400 were given a revised pay scale of Rs. 795-1540 under the same pay rules, the respondent should also be granted the said pay scale of Rs. 975-1540 instead of Rs. 950-1500. In our view the aforesaid reasoning adopted by the Tribunal is totally misconceived and cannot be sustained. When we turn to the Central Civil services Revised Pay Rules, 1986, we find in the First Schedule to the said Rules framed in the light of Rules 3 and 4, Item 6 of Part "A" dealing with all posts carrying present pay scales and pay scales of Rs. 260-400 which were revised to Rs. 950-1500. The respondent admittedly got the benefit of those revised pay scales. But the Tribunal thought it fit to award to the respondent still higher pay scale which was made available under the Rules to the Auxiliary Nurses and Midwives. Their pay scale is mentioned in Part B of the Schedule at Item 4 in para IX dealing with paramedical staff. The Auxiliary Nurses and Midwives who were getting the pay scale of Rs. 260-350 and Rs. 260-400 were given a uniform higher pay scale of Rs. 975-1540. The Tribunal compared the earlier pay scales of Auxiliary Nurses and Midwives with the earlier pay scales of the respondent and thought it fit to grant the same hike in the pay scale which was made available under the Revised Pay Rules to Auxiliary Nurses and Midwives to the respondent also. In our view that exercise was totally unauthorised as it amounted to take a policy decision which was within the domain of the authorities themselves who are the authors of the revised pay scales. The Tribunal having come to the conclusion that on merits the respondent had no case on the ground of equal pay for equal work, the OA ought to have been dismissed. Our attention was also drawn by the learned Senior Counsel for the appellant to a decision of this Court reported in *State of U.P. v. J. P. Chaurasia*. In that judgment the following observations are made :-

"The first question regarding entitlement to the pay scale admissible to Section Officers should not detain us longer. The answer to the question depends upon several factors. It does not just depend upon either the nature of work or volume of work done by Bench Secretaries. Primarily it requires among others, evaluation of duties and responsibilities of the respective posts. More often functions of two posts may appear to be the same or similar, but here may be difference in degrees in the performance. The quantity of work may be the same,

but quality may be different that cannot be determined by relying upon averments in affidavits of interested parties. The equation of posts or equation of pay must be left to the Executive Government. It must be determined by expert bodies like Pay Commission. They would be the best judges to evaluation the nature of duties and responsibilities of posts. If there is any such determination by a Commission or Committee, the Court should normally accept it. The Court should not try to tinker with such equivalence unless it is shown that it was made with extraneous consideration."

... ..

Relying upon the said decision, it has been argued by Mr. Oza that since the decision is taken on sound principle and on the basis of the facts and circumstances of the case, the said decision may not be interfered with by this Court invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Mr. Oza submitted that the change in the Government Policy itself does not vitiate the decision taken pursuant thereto, if the changed policy is rational and reasonable.

Reference is also required to be made to the latest decision of the Apex Court in the case of BALCO Employees Union (Regd.) Vs. Union of India and Others, . In the aforesaid decision, the validity of the decision of the Union of India to disinvest and transfer 51% of shares of M/s. Bharat Aluminium Company Ltd. was under consideration before the Court. The Apex Court has observed as under:-

... ..

46. It is evident from the above that it is neither within the domain of the courts nor the scope of the Judicial review to embark upon an enquiry as to whether particular public policy is wise or whether better policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.

47. Process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made but by disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business,

inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on Part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners, non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of Part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.

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92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy the appropriate forum is Parliament and not the Courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.

... ..

15. Considering the aforesaid judgments cited at the Bar as well as considering the facts and circumstances of the case, I am of the opinion that the impugned Resolution dated 25-2-2000 cannot be branded as arbitrary or discriminatory in any manner. The said Resolution is passed after considering the various facts and circumstances of the case, as pointed out in the reply. As argued by the learned Government Pleader, even as per the earlier Resolution of 15th December, 1975, the staff concerned was supposed to satisfy the authority that he was required to reside within the qualified city out of necessity, i.e. for want of accommodation nearer to their place of duty. Since the said clause was found to have been misused and misapplied in many cases, ultimately, it was decided to delete

clause 1 (iii)(a) of the said Resolution of 15th December, 1975. Such decision, ipso facto, cannot be said to be arbitrary or discriminatory, and, on closer scrutiny of the facts and circumstances of the case, it can be said that it is based on sound principle and on rational ground. Simply because the petitioners might have got H.R.A. at a higher rate is no ground for attacking the said Resolution and, as stated earlier, such compensatory allowance can be amended or changed from time to time, looking to the exigency and as per the situation prevailing at the relevant time. In fact, by the aforesaid amendment, even those employees, who were not entitled to get any amount of H.R.A., who are residing in the rural part of the State, are all given benefit of H.R.A. at the rate of 5%, and employees whose place of duty is situated within the qualified city or in any Urban Agglomeration Area, are given H.R.A. at the uniform rate of 15%.

16. Considering the aforesaid aspect, I am of the opinion that the said Resolution cannot be struck down on the ground of arbitrariness or on the ground of nonavailability of power for issuing such Resolution or even on the ground of discrimination. In view of the aforesaid reasoning, I do not find any substance in any of the arguments canvassed on behalf of the petitioners. This Court is not expected to carry out investigation in order to find out whether Dashrath, wherein the place of duty of the petitioners is situated, is a place where housing accommodation is cheaply available or not since it is not within the Urban Agglomeration Area. Naturally, the petitioners are entitled to get H.R.A. at the rate of 5% and, as submitted by the learned G.P., moment the place of duty of the petitioners is included in Urban Agglomeration Area, the petitioners will start getting the benefit of H.R.A. at the rate of 15%. In these circumstances, I do not find any substance in the petitions. The petitions are required to be dismissed and they are accordingly dismissed. Rule is discharged with no order as to costs.

At the request of the learned Advocate for the petitioners, interim relief granted earlier is extended upto 28th March, 2002.

In view of the disposal of the main Special Civil Applications, Civil Application No. 11986 of 2001 does not survive and it is also disposed of accordingly.