

(2006) 05 SC CK 0058

In the Supreme Court Of India

Case No : Civil Appeal No's. 7567, 7569, 7600-7601, 7606 and 7607 of 2002 and 2323 and 2987 of 2004

P.S.E.B. and Another

APPELLANT

Vs

Som Nath and Others

RESPONDENT

Date of Decision : 18-05-2006

Acts Referred:

Citation : AIR 2006 SC 2123 : (2006) AIRSCW 2726 : (2006) 6 SCALE 123 : (2006) 9 SCC 574 : (2006) 6 Supreme 394 : (2006) 1 UJ 788

Hon'ble Judges : R. V. Raveendran, J;K. G. Balakrishnan, J

Bench : Division Bench

Advocate : Harinder Mohan Singh, Kaushal Yadav and Shabana Saifi, for the Appellant; R.K. Kapoor, M.K. Verma and N.K. Gajua for P.N. Puri, L.N. Gupta and Party-in-Person, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—These appeals are filed against the judgments of the Punjab & Haryana High Court in the following cases:

S. No Civil Appeal No. Case No. before High Date of Court Judgment of High Court i) 7567/2002 CWP 12606/1995 14.5.1998 ii) 7569/2002 RSA 2990/1996 22.1.1999 iii) 7600-01/2002 CWP 12810/1995 14.5.1998 iv) 7607/2002 RSA 3237/1996 22.1.1999 v) 7606/2002 CWP 12830/1995 14.5.1998 vi) 2323/2004 CWP 3752/2002 3.11.2003 vii) 2987/2004 CWP 4903/2002 3.11.2003

These appeals involve a common question, as to protection of higher House Rent Allowance drawn upto 31.8.1988 by the employees of Punjab State Electricity Board, after the revision of such allowance with effect from 1.9.1988.

2. The appellant is the Punjab State Electricity Board (hereinafter referred to as "the Board"). The respondents are/were the employees of the Board. At the relevant point of time, the Respondents were posted at Ajnala, Ramdas, Patti,

Khem Karan in the district of Amritsar and at Ferozepur, in places within a radius of 16 kms from the international border. As employees posted in the border areas within a radius of 16 km from the international border, they were paid HRA applicable to I class or A class cities in Punjab, by taking note of the special problems relating to border areas. Thus all the Respondents were getting the higher rate of HRA applicable to I Class/"A" Class cities.

3. The State Government revised the rates of HRA vide circular dated 30.8.1988, implementing the recommendations of the Third Pay Commission. The Board adopted the revised rates of HRA introduced by the State Government By Order No. 142/FIN.PRC-1988 (Finance Circular No. 11/89) dated 7.3.1989, it classified cities and towns in Punjab into four classes [Class A, Class B, Class C and Class D] and revised the rates of house rent allowance for various pay ranges admissible in different classes of cities/ towns. We extract below the relevant portion of the said order dated 7.3.1989:

(ii) The rates of house rent allowances for various pay ranges admissible in different classes of cities/towns shall be as under:

Pay Range	Class "A"	Class "B"	Class "C"	Class "D"	City	City	City	Town	Rs.	Rs.			
Rs.										Rs.			
750-1249	200	150	100	75	1250-1749	300	225	150	100	1750-2249	400	300	200
150	2250-2749	500	375	250	175	2750-3249	600	450	300	225	3250-3749	700	
525	350	250	3750-4249	800	600	400	300	4250-4749	900	675	450	325	
4750-5249	1000	750	500	375	5250	1000	750	500	375	onwards			

The amount of house rent allowance being drawn under the existing orders by the employees at higher rates than those specified above shall be protected till their rate of house rent allowance gets adjusted in their revised rates.

(iii) The house rent allowance shall no longer be admissible at the places falling within 8 kms radius of the municipal/outer limits of the classified cities/downs, save in those cases where house rent allowance is admissible at the place of posting itself.

(iv) The eligibility of house rent allowance of an employee shall be determined with reference to the place of posting of the employee.

The other existing terms and conditions regarding the grant of house rent allowance shall continue to be in force.

4. By circular dated 10.5.1989, the Board ordered that its employees who are entitled to rent tree accommodation, when not provided or allotted with such accommodation, shall be allowed 5% of the basic pay in addition to the normal HRA admissible at the place of posting. By another circular dated 10.5.1989, Clause (iii) in the order dated 7.3.1989 was substituted with effect from

1.9.1988 to the effect that house rent allowance of the employees is also admissible to the places falling within 8 km radius of the periphery municipal/ outer limits of the classified cities/downs.

5. In view of different interpretations of the HRA orders by different offices, the State Government issued a clarificatory Circular dated 19.9.1990 (adopted by the Board by Finance Circular No. 25/1992 dated 29.5.1992), relevant portions of which are extracted below:

a) Government employees entitled to rent free accommodation when not provided/allotted such accommodation shall be allowed payment equal to the house rent charged by the Government from the employees for Government accommodation i.e. 5% of the basic pay in addition to the normal house rent allowance, if admissible at the place of posting. This implies that the employees posted at the place in the belt of 16 kms. from the International Border who are entitled to rent free accommodation as also other employees who are otherwise entitled to rent free accommodation will get 5% of the basic pay in addition to the house rent allowance if the place of posting of the employees falls, in Class A, Class B, Class C, and Class D Cities, as the case may be in accordance with the instructions contained in the Department of Finance letter No. 10/77/88/FPI/8014 dated 30th Aug. 1988. It is made clear that the amount of house rent allowance of First class cities admissible before 1.9.1988, to the employees posted in the belt of 16 kms. from the International Border is not covered within the protection of the House Rent Allowance, as this amount of House Rent Allowance was admissible in lieu of rent free accommodation only.

b) In the rural area, house rent is not admissible to the Government employees who, prior to 1.9.1988, were entitled to house rent allowance of first class cities or second class cities, as the case may be. The Govt. employees posted in the rural areas who are entitled to rent free accommodation when not provided such accommodation are entitled to 5% of the basic pay, in addition to rural area allowance and nothing more. In view of this position, the employee posted in rural area, who, prior to 1.9.1988, were drawing house rent allowance in accordance with the earlier instructions in lieu of rent free accommodation are not entitled to be given any protection of amount of house rent allowance which they were claiming previously.

6. Some of the respondents filed writ petitions before the Punjab and Haryana High Court alleging that they were not being extended the benefit of protection of higher HRA drawn upto 31.8.1988, granted under the Circular dated 7.3.1989 and seeking a direction to the Board to pay them the protected (higher) HRA as drawn by them as on 31.8.1988. The High Court disposed of the writ petition, permitting the petitioners therein to file representation/s, and to treat the writ petition itself as the representation, if no separate representation was filed, and to dispose of the claims by a speaking order. The High Court also directed that till such orders were made, deduction of HRA shall remain stayed and no recovery shall be made from the employees. It further directed that if the representations

were decided against the affected employees, the amount drawn on the basis of the said orders shall be recoverable in future.

7. The Board, accordingly, considered the representations of the Respondents and rejected the same by order dated 13.7.1995 holding that they were not entitled to the benefit of protection as per the Circulars dated 7.3.1989 in view of the clarificatory instructions contained in the Government Circular dated 19.9.1990 adopted by the Board on 29.5.1992. The respondents herein challenged the said order dated 13.7.1995 in several writ petitions with a further prayer that the HRA that was being paid to them up to 31.8.1988, should be protected. The said writ petition was allowed by the impugned orders dated 14.5.1998 and 3.11.2003 with a direction that the HRA that was admissible to respondents prior to 31.8.1988 shall be protected. The High Court followed the decision of this Court in *Mohinder Singh v. State of Punjab* [SLP (c) No.9149 of 1992 decided on 21.4.1995], while allowing the writ petitions. Some employees of the Board had also tiled civil suits for a declaration that they are entitled to protection of higher HRA which they receiving till 31.8.1988 and those suits were decreed and those decreed were affirmed by the first Appellate Court as also by the High Court on 22.1.1999. The said orders dated 14.5.1998 and 3.11.2003 in the writ petitions and the judgment and decrees dated 22.1.1999 in the second appeals are challenged by the State in these appeals by special leave.

8. The appellant contends that the benefit of the protection clause in the order dated 7.3.1989 is not available to the respondents, in view of the clarification contained in the Circular dated 19.9.1990 issued by the State Government which was adopted by the Board on 29.5.1992. It is submitted that the HRA admissible before 31.8.1988 to employees posted in areas falling within 16 km international border are not covered by the protection clause as what was being paid was not HRA but an allowance in lieu of rent free accommodation. It is contended that the decision of this Court in *Mohinder Singh* (supra) is inapplicable as it did not consider the circular dated 19.9.1990 of the State Government and adoption Circular dated 29.5.1992 of the Board.

9. The contention of the appellant that the decision of this Court in *Mohinder Singh* (supra) was inapplicable, as the Circular dated 19.9.1990 adopted by the Board on 29.5.1992 was not considered, is incorrect and untenable. We have secured and examined the records of C.A. No. 5124/1995 [*Mohinder Singh v. State of Punjab*]. That petition related to the employees of the State Government working in Patti, Amritsar District, situated within the 16 km from the international border. Relying on the Circular dated 19.9.1990, on identical contentions, the State Government refused to extend the benefit of the HRA protection. That decision was challenged by the government servants in W.P. No. 7734/1992 and the said writ petition was dismissed by the Punjab High Court vide order dated 12.2.1992 following the decision dated 4.2.1992 in LPA No. 895/1991. The said decision in LPA No. 895/1991 considered the very same contentions with reference to the Government Circular dated 19.9.1990 and

upheld the stand the State Government. It was the said decision in favour of the State Government that was challenged before this Court in C.A. No. 5124/1995 which was allowed by me following order dated 21.4.1995:

Leave granted

These appeals impugn a common judgment and order of the High Court of Punjab and Haryana. The only question urged in these appeals is in relation to the house rent allowance (H.R.A.) payable by the State of Punjab to its employees classified in the A, B, C, D categories of a circular dated 30th August, 1998. The rates of HRA were thereby revised. A proviso stated that the HRA being drawn by employees at rates higher than those specified in the circular "shall be protected, till their rate of HRA gets adjusted in these revised rates". It is not in dispute that this proviso protects the HRA. that is being drawn if it is at a rate higher than that prescribed by the circular. The protection enures until the rate specified in the circular is enhanced to a rate higher than that presently drawn.

In view of this undisputed position, the appeals are allowed and the judgment and order of the High Court is set aside to the extent aforesaid. The State Government shall give such protection to its appellant employees.

Thus the decision in Mohinder Singh (supra) squarely and directly applies to the facts of these cases. Therefore, the High Court was justified in allowing the writ petitions filed by the Board employees in terms of the decision in Mohinder Singh.

10. The Order dated 7.3.1989, clearly protects the higher House Rent Allowance drawn by the employees of the Board under the existing orders, upto 31.8.1988. The clarificatory Circular dated 19.9.1990 of the State Government, adopted by the Board by Circular dated 29.5.1992, does not cancel or delete the protection clause in regard to the higher HRA extended under the order dated 7.3.1989. The fact that those posted in places falling within 16 km radius of international border were paid a higher HRA as in the case of Class I or Class "A" cities on account of special circumstances, is not a ground to exclude them from the protection of higher HRA, available under the order dated 7.3.1989. It is unfortunate that the Board having given protection of higher HRA drawn by its order dated 7.3.1989, has tried to avoid the obligation on untenable grounds. The alleged clarification contained in the letter dated 19.9.1990 in no way assists the Board to avoid liability to protect the higher HRA of Respondents in terms of the order dated 7.3.1989. At all events, the matter being squarely covered by the decision in Mohinder Singh, it is not open to the Board to contend otherwise.

11. We, therefore, find no reason to interfere with the impugned orders/judgments. The appeals are, therefore, dismissed.