

(2019) 12 J&K CK 0046

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 3440 Of 2014

R. K. Munshi

APPELLANT

Vs

State Of Jammu And Kashmir & Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Jammu and Kashmir Civil Services (House Rent. Allowance and City Compensatory Allowance) Rules, 1992 — Rule 6(h)(ii), 6(h)(iv)

Citation : (2019) 12 J&K CK 0046

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Raman Sharma

Final Decision : Dismissed

Judgement

Tashi Rabstan, J

1. In short, the case of the petitioner is that gazetted Quarter No. 6-A, GO Block, was allotted to his father, who was Deputy Superintendent of Police at the relevant time, and the petitioner after the year 1989 being Inspector Telecom in the police department had also been sharing the said accommodation with his father. The father of petitioner retired in the year 1993. It is averred that even after retirement, the father of petitioner continued to avail the said accommodation being the retired migrant employee from the Valley and the petitioner was only sharing the said accommodation with this father, as such, even after the retirement of his father, he was entitled to get the House Rent Allowance during the period he was sharing the said accommodation with his father. Therefore, order No.2039 of 2014 dated 02.08.2014, impugned herein, whereby it has been directed to deduct an amount of Rs.3,96,814/- on account of HRA from the leave salary of petitioner, has wrongly been issued and the same is required to be quashed. Hence, the present petition.

2. Petitioner pleads that Rule 6(h)(iv) of J&K Civil Services (House Rent

Allowance and City Compensatory Allowance) Rules, 1992 provides that in cases where husband/wife/parents, children two or more of them being State Government servants or employees of Central Government, Autonomous Public Undertakings, or Semi-Government Organizations share accommodation allotted to another Government servant, House Rent Allowance will be admissible to only one of them at their choice. He, thus, pleaded that since the quarter-in-question had been allotted in the name of his father, as such in terms of the said Rule, he (petitioner) was entitled to the House Rent Allowance.

3. Objections have been filed on behalf of respondents averring therein that after the retirement of petitioner, an amount of Rs.3,96,814/- was found outstanding against the petitioner on account of HRA. Since the petitioner had failed to place on record any document indicating that the quarter-in-question, i.e., Quarter No. 6-A, GO Block, was not under his possession/occupation and in which capacity he had been paying rental of said quarter, as such vide the order impugned it was directed to deduct an amount of Rs.3,96,814/- on account of HRA from the leave salary of petitioner.

4. I have heard the petitioner as well as learned counsel appearing for respondents and also perused the writ file.

5. Admittedly, the petitioner has not denied that he was living in quarter-in-question, i.e., Quarter No.6-A,GO Block since 31.10.1989 nor he has denied that he had been regularly making payments with effect from April, 1991 to June, 2013 on account of maintenance charges as well as paid additional charges on account of rent of the said quarter from August 2001 to June, 2013. At pages 36 and 37 of the petition, the petitioner has himself admitted that he had been residing in Quarter No.6-A,GO Block, Police Complex Channi, Jammu. Even, Communication No.PEWJ/list-Qtr/12/1008 dated 08.12.2012 addressed to Staff Officer to DPT, J&K, Jammu from Deputy Superintendent of Police, Estates and Welfare, Jammu reveals that the quarter-in-question was reportedly allotted in favour of petitioner vide CO-4th Battalion Order No.QB/10876-86/IV dated 31.10.1989. Further, the petitioner has failed to prove that when the said quarter had not been allotted in his name, then in which capacity he had been paying rentals for the said quarter. Not only this, the petitioner has also failed to place on record any document indicating that the quarter-in-question was re-allotted in the name of his father after the father of petitioner retired from service in the year 1993. Once the petitioner had been in possession of and staying in Government accommodation, he, as per rules, was not entitled to the House Rent Allowance for the period he remained in possession of such accommodation and the respondents were, thus, justified in recovering the outstanding amount from the petitioner on account of HRA for the period he was staying in Government accommodation.

6. As regards Rule 6(h)(iv) of J&K Civil Services (House Rent Allowance and City Compensatory Allowance) Rules, 1992, House Rent Allowance was certainly admissible to petitioner only if his father had been paying the House Rent

Allowance for the quarter-in-question. In the present case, it is the admitted stand of petitioner in paragraph-10 of the petition that his father got retired from service in the year 1993. Once the father of petitioner had already been retired from service, then no question arises for payment of House Rent Allowance by his father after the year 1993 till the petitioner retired from service in April, 2014. Petitioner also did not produce any document on record disclosing that the quarter-in-question was re-allotted in the name of his father after the father of petitioner retired from service in the year 1993. Once it is the admitted fact that the father of petitioner was not paying House Rent Allowance towards the quarter-in-question after his retirement in the year 1993, Rule 6(h)(iv) (supra), relied upon by the petitioner, does not apply in his case.

7. Here, it would be relevant to reproduce Rule 6(h)(ii) of J&K Civil Services (House Rent Allowance and City Compensatory Allowance) Rules, 1992:

"6 (h) A Government servant shall not be entitled to House Rent Allowance, if :-

(i)

(ii) he/she resides in accommodation allotted to his/her parents, son, daughter by the Government."

8. Therefore, even if the Court believes that what the petitioner is averring is correct, even then in terms of the said rule the petitioner was not entitled to the House Rent Allowance.

9. Lastly, the petitioner while relying upon various judgments of this Court as well as of the Apex Court has argued that the Government cannot effect recovery from any Government employee who has retired several years ago in case there was lapse on the part of official respondents in effecting the recovery when such Government employee was in service.

10. Lastly, the petitioner, while relying upon various judgments of this Court as well as of the Apex Court, has argued that the Government cannot effect recovery from any Government employee who has retired several years ago and the Government has failed to take steps for recovery of said amount when such employee was in active service. In the present case, the petitioner retired in April, 2014, whereas the documents annexed with the writ file reveals that the respondents vide different communications/reminders were pressing upon the petitioner for deposition of HRA from the year 2013 and the petitioner was avoiding the same on one or the other pretext. Therefore, the judgments cited by the petitioner are not applicable to the present case.

11. In view of the above discussion, I do not find any merit in the writ petition. Accordingly, the same is dismissed along with interim application(s), if any.