
(2010) 07 DEL CK 0099

In the Delhi High Court

Case No : Writ Petition (C) 12216 of 2004

Radhey Shyam

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Citation : (2010) 07 DEL CK 0099

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : S.D. Singh and Rahul Kumar Singh, for the Appellant; Jagat Arora, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The petitioner, working with the respondent Indian Oil Corporation Ltd. (IOC), by this writ petition impugns the action of respondent IOC of seeking to recover back the House Rent Allowance (HRA) paid to the petitioner w.e.f. 1st January, 1997 to 31st January, 2003; the petitioner seeks further direction for payment to him of HRA from 1st February, 2003 onwards.

2. It is the case of the petitioner that as per Clause 7 of the Memorandum of Settlement between the respondent IOC and its workmen, HRA is payable on revised basic pay effective 1st January, 1997, without production of rent receipt and merely upon the workmen furnishing a certificate that they have incurred expenditure on rent/contributed towards rent/resided accommodation etc; that he was being so paid HRA w.e.f. 1st January, 1997; however the payment of HRA to him was stopped w.e.f. February, 2003 on the ground that his wife was also employed with the respondent IOC and also drawing HRA and as per the policy of respondent IOC, in case of both husband and wife working with IOC and posted at the same location, HRA without production of rent receipt is admissible to only one of the spouses, except when the rental value of the house exceeds the HRA paid to one of the spouses and in which case the other spouse may draw HRA to the extent of shortfall in the assessed rent and HRA paid to one of the spouses. It is the case of the petitioner that under the rules relating to HRA

applicable to Central Government employees, HRA is allowed even if an employee shares private accommodation with spouse (both husband and wife are allowed HRA separately) and HRA is not allowed only if an employee shares accommodation allotted rent free to the spouse. It was thus the contention of the petitioner that the action of respondent IOC of stoppage of payment of HRA to him w.e.f. 1st February, 2003 and the further action of respondent IOC of seeking to recover back HRA paid to him from 1st January, 1997 to 31st January, 2003 is bad.

3. This Court vide ex-parte order dated 27th July, 2004, while issuing notice of the writ petition, on the contention of the petitioner that the HRA Rules applicable to Central Government employees should also apply to the employees of the respondent IOC, stayed the recovery of HRA by respondent IOC from the petitioner. The said order was confirmed on 8th October, 2007.

4. The respondent IOC has contended that the HRA Rules applicable to the Central Government employees are not applicable to IOC. It is contended that payment of HRA to employees of IOC is governed only by the Memorandum of Settlement between IOC and its employees/workmen.

5. The Memorandum of Settlement relied on by the petitioner does not provide that in the event of both the husband and the wife working for IOC, HRA without production of rent receipt would be payable only to one. The respondent IOC has however along with its counter affidavit filed a Long Term Settlement signed between IOC and its workmen on 4th January, 2001 (New Settlement), in supersession/modification of the Memorandum of Settlement relied upon by the petitioner (Old Settlement). Clause 5.4 of the New Settlement does provide that HRA shall be admissible to only one of the spouses as aforesaid. However, notwithstanding the New Settlement of 4th January, 2001, HRA as aforesaid continued to be paid to both, the petitioner and his wife till 31st January, 2003 as aforesaid.

6. In view of the New Settlement of 4th January, 2001, the disputed HRA from 1st January, 1997 can for adjudication be split into two parts, i.e. from 1st January, 1997 till 3rd January, 2001 (i.e. till the New Settlement came into force) and from 4th January, 2001 onwards. During the hearing, it was informed that the petitioner and his wife in accordance with the New Settlement had on 18th April, 2005 applied for assessment of rent of the accommodation occupied by them and the rent assessed was found to be more than HRA entitlement of both petitioner and his wife and as such w.e.f. 1st April, 2005, HRA is being paid to both, the petitioner as well as his wife. Thus the dispute qua HRA is till 31st March, 2005 only.

7. As far as the first part of disputed HRA, i.e. w.e.f. 1st January, 1997 to 3rd January, 2001 is concerned, the question which arises is, whether the respondent IOC can apply the New Settlement (and owing to Clause 5.4 wherein the payment of HRA to petitioner was stopped and HRA paid sought to be recovered)

retrospectively. In my opinion, No. The contention of the respondent IOC is that payment of HRA is governed only by the Settlement. In the absence of any such clause in the Old Settlement prevalent/in force from 1st January, 1997 till 3rd January, 2001, the respondent IOC could not unilaterally impose its own interpretation of any clause therein or a change/clarification/amendment in the New Settlement, on the petitioner. I had during the hearing enquired from the counsel for the respondent IOC whether there was any term in the Old Settlement entitling the respondent IOC to so interpret the terms of settlement or to impose any further conditions therein. The counsel for the respondent IOC was unable to show any. The only requirement in the Old Settlement for payment of HRA was of furnishing of a certificate. It is presumed that payment of HRA to the petitioner from 1st January, 1997 till 3rd January, 2001 was against issuance of such certificate. The respondent IOC is not entitled to impose any additional term and conditions regarding payment of HRA and is thus found not entitled to recover HRA paid to the petitioner for the period before coming into force of the New Settlement. The New Settlement also does not provide for application thereof retrospectively or for recovery/refund of payments already made to both spouses.

8. The next question is qua second part of HRA, i.e. from 4th January, 2001 to 31st March, 2005. The petitioner under the New Settlement was not entitled to HRA, unless conditions of New Settlement were met. Nevertheless the payment continued to be made to the petitioner till 31st January, 2003, though in contravention of the New Settlement. However, in my view the respondent IOC is estopped from recovering back the payment so made from 4th January, 2001 to 31st January, 2003. Clause 5.4 of the New Settlement was not a complete bar to payment of HRA to both husband and wife. Under the said clause also, both were entitled to draw HRA to the extent of the assessed rent of their accommodation. If the respondent IOC, in accordance with the New Settlement had stopped payment of HRA to the petitioner, the petitioner could have exercised the option of having the rent of the accommodation occupied by him and his wife assessed and if the assessed rent thereof was found to be in excess of the HRA paid to the wife of the petitioner, the petitioner would still have been entitled to HRA to the said extent. Owing to the respondent IOC continuing to pay HRA to the petitioner, the petitioner did not have the occasion to apply for assessment of the rent and the respondent IOC is now estopped from contending otherwise. The petitioner and his wife are informed to have shifted to a new accommodation on 22nd March, 2004 (and rent whereof they got assessed as aforesaid); now, assessment of rent of earlier accommodation is highly unlikely. The respondent IOC is thus not found entitled to recover back any amount paid to the petitioner as HRA.

9. The question of entitlement of the petitioner to HRA from 1st February, 2003 to 31st March, 2005 remains. During the said period the New Settlement was in force and whereunder the petitioner and his wife, both were not entitled to HRA unless the assessed rent of the accommodation occupied by them was more than

the HRA of one. The petitioner though occupied the new accommodation on 22nd March, 2004 applied for assessment of rent thereof only on 18th April, 2005 and owing whereto is receiving HRA w.e.f. 1st April, 2005.

10. The accommodation earlier occupied by the petitioner and his wife from 1st February, 2003 to 21st March, 2004 was not got assessed. I am now not inclined to grant an opportunity to the petitioner to have the rent of that accommodation assessed. The petitioner and his wife ought to have known of the New Settlement and acted thereunder. The petitioner himself being at fault, is not entitled to HRA from 1st February, 2003 to 21st March, 2004. The contention of the petitioner that as per rules of HRA applicable to Government employees, he is entitled to HRA is not acceptable in view of Clause 5.4 in the New Settlement and with which the petitioner is bound. A Five Judge Bench of the Supreme Court in *Hindustan Antibiotics Ltd. Vs. The Workmen and Others*, has held that though in fixing the pay structure of public corporations (as IOC is), due regard should be had to pay structure in Civil Services, the same is only advisory in nature and does not mean that wage structure of public corporation should be of same pattern obtaining in departments of the Government.

11. I however am inclined to direct payment of HRA to the petitioner w.e.f. 22nd March, 2004 i.e. from the date of occupation of the new accommodation, on the basis of assessed rent whereof the petitioner is being paid HRA w.e.f. 1st April, 2005. The reason therefore being that it is also the plea of the petitioner that the respondent IOC is discriminating against the petitioner; it is paying HRA to other couples employed with the respondent IOC. An affidavit giving particulars of such other couples has been filed. No counter thereto has been filed by the respondent IOC. On enquiry during the hearing, the counsel for the respondent IOC could only state that the documents filed by the petitioner in this regard, are of divisions of IOC other than that in which the petitioner and his wife are employed. However, the counsel for the respondent IOC fairly admitted that the Settlements aforesaid, govern employees of all divisions of IOC and not merely of the division in which the petitioner and his wife are employed. In these circumstances, it is felt that the petitioner should be paid HRA since the date of occupation of the new accommodation in spite of delay in having the rent thereof assessed.

12. The counsel for the respondent IOC has relied on *Committee of Management, Victoria Inter College and Another Vs. Amar Nath Gupta and Others*, where a Division Bench of the Allahabad High Court held that if both husband and wife are in service, then both are not entitled to HRA and on *Narayan Ram Palli v. State* 2007 Lab. IC 52 relating to HRA payable to Government Servants. However, in view of the contention of the respondent IOC that payment of HRA to employees of IOC is governed by the Settlements of IOC with its workmen, the said judgments are of no avail.

13. The counsel for the petitioner has with rejoinder also filed Inter Office Memo dated 9th August, 2004 regarding HRA; however that is with respect to cases

where accommodation is "provided" to one of the spouses and is not applicable in the facts of this case.

14. The writ petition, therefore, succeeds to the aforesaid extent. The demand dated 15th March, 2004 of the respondent IOC of Rs. 2,29,015/- from the petitioner for recovery of HRA already paid is struck down/quashed. The respondent IOC is also directed to pay to the petitioner HRA w.e.f. 22nd March, 2004 till 31st March, 2005. The payment as aforesaid, be made to the petitioner within six weeks failing which the respondent IOC shall also be liable for simple interest thereon at the rate of 9% per annum. The claim of the petitioner for HRA from 1st February, 2003 to 21st March, 2004 is however declined.

In the facts of the case, no order as to costs.