
(2009) 08 DEL CK 0453

In the Delhi High Court

Case No : Writ Petition (C) No. 7132 of 2008 and C.M. No. 13781 of 2008

Rajni Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0453

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Pradeep Dahiya, for the Appellant; S. Singh and Vimal Goyal, to 4, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Gaur, J.—House Rent Allowance (HRA) inadvertently paid to the Petitioner is sought to be recovered by the Respondents, in pursuance to the Audit Objection. Petitioner is Hostel Warden, National Bal Bhawan, since October, 1996 and she had been drawing the House Rent Allowance, despite the fact that she was residing with her husband in Government accommodation allotted to her husband, who was also in Government service.

2. Petitioner had made representation against the recovery of the inadvertent payment of House Rent Allowance to her and her representation stood rejected vide Annexure P-13. Request of the Petitioner to place this matter before the Board of Management of the Respondent also stood declined vide impugned order of 8th May, 2007 (Annexure P-21).

3. Aforesaid impugned orders (Annexure P-13 and Annexure P- 21) are assailed in this petition on the ground that there is no concealment of any information on the part of the Petitioner as she had disclosed about her place of residence at Rajya Sabha Niwas, to the Respondent. According to the Petitioner, the impugned memorandum (Annexure P-13) does not disclose the reasons for rejection of her representation and it is the case of the Petitioner that refusal by the Respondents

to place this before the Board of Management of the Respondent is arbitrary and illegal.

4. Petitioner claims that in good faith, she was under the impression that she was entitled to the House Rent Allowance and learned Counsel for the Petitioner has drawn attention of this Court to the office noting (Annexure P-18) to show that it is not a case of concealment and it is asserted that the benefit once granted cannot be withdrawn with retrospective effect.

5. The stand of the Respondents is that in July, 2003, the Respondent came to know that the Petitioner was residing with her husband who was allotted Government accommodation, and vide memo of 23rd July, 2003, her explanation was sought and the reply given by the Petitioner was mixed up with other papers and could not be processed further by the Drawing And Disbursing Officer and Petitioner continued to draw the House Rent Allowance. However, in July, 2005, Central Audit found that House Rent Allowance paid to the Petitioner was irregular and the Respondent was asked to recover over paid amount of House Rent Allowance of Rs. 1,19,168/- and accordingly, recovery process was started and Petitioners representation was rejected as there could be no waiver of the irregular amount of House Rent Allowance paid to her. It was conveyed to the Petitioner that payment of House Rent Allowance to her was in contravention of Ministry of Finance OM No. 21011/13/87- E.II(B) dated 20.12.1989. According to the Respondents, this petition merits dismissal.

6. Both the sides have been heard and the material on record and the decisions cited have been perused.

7. The present case may not be of deliberate concealment but the question herein is of entitlement. When the Petitioner is residing with her husband in a Government accommodation allotted to her husband, then how she is entitled to the House Rent Allowance? This, the Petitioner fails to explain. Reliance has been placed by the Petitioner upon a decision in Shyam Babu Verma and Ors. v. Union of India and Ors. (1994) 27 ATC 121, wherein higher pay scale was erroneously given a decade ago and in the facts of that case, it was held that it was not just and proper to belatedly recover the excess amount, which was marginal one. Similarly, in Sahib Ram Vs. State of Haryana and Others, , excess payment upon up-gradation of pay scale was given due to wrong construction of relevant order and in such a circumstance, Department was restrained from recovering the payment already made. In an unreported decision in C.W. No. 1565 of 1999, this Court on 21st August, 2001, had exercised its discretion to waive of the recovery of Rs. 8,000/- towards the House Rent Allowance as the employee was posted at a hard Station. However, it was clarified that this would not be treated as precedent. In The State of Karnataka and Another Vs. Mangalore University Non-Teaching Employees Association and Others, , on the special facts of that case, University employees were protected against the move to recover excess payment made up to 31st March, 1997.

8. It is, thus, apparent that the aforesaid decisions relied upon by the Petitioner do not advance the case of the Petitioner in any manner whatsoever as in none of these decisions, it has been held that inadvertently made payments cannot be retrospectively recovered. Present case is not of belated recovery of the allowance inadvertently paid. Although, in the impugned order (Annexure P-21) the reasons for rejection of Petitioners representation have not been spelt out, but they find mention in Annexure P-18, which the Petitioner is not able to meet. No extra-ordinary or special circumstances exists warranting waiver of House Rent Allowance inadvertently paid to the petitioner. Since the Petitioner is not able to justify to the payment of House Rent Allowance made to her, she has no reasonable justification to retain it. Therefore, no fault can be found in order (Annexure-13) directing recovery of the House Rent Allowance paid to the petitioner. Therefore, impugned order, (Annexure P-21), does not suffer from any arbitrariness or illegality.

9. Consequentially, this writ petition as well as pending application are dismissed. No costs.