
(1982) 03 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Appeal No. 1971 of 1972

Shri Ish Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-03-1982

Acts Referred:

Citation : AIR 1982 Delhi 567 : (1982) 2 ILR Delhi 1066 : (1982) 2 SLJ 220

Hon'ble Judges : S. Ranganathan, J

Bench : Single Bench

Advocate : Soma Sekhran and R.K. Mehra, for the Appellant;

Judgement

S. Ranganathan, J.

(1) The petitioner Ish Kumar, was at relevant time an Assistant/Deputy Director in the Central Water and Power Commission (CWPC). The Writ petition relates to an attempt on the part of the respondents to recover from the petitioner the House Rent Allowance (HRA) accorded to him in respect of two periods: (1) from 1-10-1963 to 3-9-1966 and (2) from 10-10-1969 to 31-12-1970 in the following circumstances.

(2) On 1-10-1963 the petitioner claimed to have taken on rent a portion of the house bearing No. Xi 11606, Faiz Gani, Darya Ganj, Delhi from his father Ch. Bhagwan Dass. an advocate, at a rent of Rs. 135 per month. On 4-11-1963 he intimated this fact to the administrative section of the Cwpc and requested that necessary authorisation to enable him to draw Hra might be obtained. In this intimation dated 4-11-1963 he stated that he was paying a rent of Rs. 135 p.m. to his father and that he was occupying a portion of the house from October, 1963. The plan of the premises and the rent receipt for the month of October, 1963 were also enclosed. The office called for, inter alia, the following clarification: (1) the production of the original assessment certificate of the house from the corporation; and (2) whether any non-member of the family (i.e. other than wife or husband, children, step-children, parents, brothers and sisters

ordinarily residing with and wholly dependant on the officer) was residing in the portion occupied by him. The petitioner gave a reply on 11-12-1963. In regard to the demand for the municipal assessment certificate he stated; "As far as I understand, the original assessment certificate is not required to be produced and is not demanded by the office in case of all such officers who produce rent receipts. The fact that my father, who is not dependent on me, happens to be a land-lord, should not make a difference in this case. I also understand that Shri P.C. Jain, Assistant Director has been drawing house Rent Allowance under similar conditions. "He also stated that himself, his wife and children and also his parents, three brothers and two sisters were residing in the house. Apparently these replies satisfied the administrative authorities and eventually the Accountant General (Commerce, Works and Miscellaneous)(for short, Ag (CWM) issued an authority to the petitioner enabling him to draw Hra on the basis of the above rent of Rs. 135 p.m. paid by him. The petitioner continued to draw the Hra on this basis from 1-10-1963 till 3-9-1966 when he was posted out of Delhi.

(3) The petitioner was re-transferred to Delhi as Deputy Director in the Cwpc with effect from 10-10-1969. On 17-10-1969 he gave the following instructions to the section officer in his Directorate. He stated that an application for sanction of Hra in the prescribed form was being enclosed in duplicate along with rent receipt for the month of October 1969 and a sketch in duplicate of the premises occupied by him. He added : "it may be stated that the house belongs to my father who is not dependent on me and I am paying rent as a tenant". A rent receipt from his father for Rs. 240 in respect of the premises earlier referred to for the month of October, 1969 and a sketch of the premises in occupation were enclosed. The application in the prescribed form for claiming Hra was also prepared and signed by the petitioner on the same date. But this application form does not contain the information that the premises in question belonged to the father of the applicant though the name of the landlord was given. The petitioner also furnished along with application form a certificate in a particular form prescribed as Annexure 111A to the effect that he was living in a rented house from 1-10-1969 on a monthly rent of Rs. 240, that he was not a sub-tenant of another Government servant, that the accommodation in question not sublet or normally occupied by other than his family members, that his wife was not employed in any Central Government Service, that any change to any other accommodation would be intimated and that the petitioner had applied for but had not been provided with Government accommodation. The application form of the petitioner along with the certificate furnished by him and perhaps the sketch of the premises was forwarded to the Ag (CWM). It now transpires that the Administration Branch of the office of the petitioner did not forward to the Ag (CWM) the note recorded by the petitioner on 17-10-1969 separately in which he had stated that the house belonged to his father and that he was paying the rent to his father as a tenant. This position is clear from a letter addressed by the Under Secretary, Cwpc to the AG(CWM) dated 8-2-1971. On the basis of the information received by him the Ag (CWM) authorised the petitioner to draw the

Hra from 1-10-1969 Onwards on the basis of the rent of Rs. 240 paid by the petitioner.

(4) Some time later, it appears that it came to the notice of the Ag (CWM) that some officers of the Cwpc were claiming Hra to which they were not entitled. In some cases the Hra was claimed without taking into account the fact that the wife or the Husband of the petitioner was also in Government service, a circumstance which modified the entitlement of the government servant concerned to HRA. Similarly it also came to light that in some cases, "the officers, although residing in the houses owned by their father mother\wife\children, have been drawing house rent allowance on the basis of a rent receipt." This was also regular, according to him, as under the rules, House R. Allowance in such cases had to be drawn on the basis of the rental value assessed by the Municipal authorities. The Ag (CWM), to whose notice this "irregularity" came, apparently called for a review of all cases of drawal of Hra by officers of the CWPC. On receipt of this report of the Ag (CWM) the Cwpc called upon its officers to furnish declarations to effect that they were drawing the Hra on a proper footing. Two types of certificates were called for and we are concerned here with one of them. The petitioner (apparently along with certain other officers) was asked to give a certificate "that I am not residing in the House owned by me/my father/mother/wife/children Hindu undivided family in which I am a co-parciner" Or ""that I am residing in a house owned by me/my father/mother/wife/children/Hindu undivided family in which I am a Co-partner ,and am drawing House Rent Allowance on the basis of the rental value assessed by the Municipal authorities." This circular put the petitioner in a difficult position. He. could not give a certificate in the form required for he was residing in a house owned by his father but was drawing Hra, on a basis other than the rental value assessed by the Municipal authorities. He. Therefore, wrote a detailed note on 4-1-1971. He said :

" AT the time of making an application for grant of H.R.A. on my repatriation from Govt. of Tripura, it was intimated that I am staying in a rented house and the landlord in this case happens to be my father who is not dependant on me. The advice to the Agc W&M was furnished to that effect and I was allowed H.R.A. on percentage basis from October. 1969 onwards. It is intimated in this connection that house has been rented only purely on account of personal convenience from my father who is neither my dependant nor we are in Hindu undivided family. If I had not rented the accommodation now with me it would have been given to somebody else on the same rent by my father. The question of producing Municipal assessment for the portion should Therefore arise only if such an assessment is asked from other officers who are claiming rent on percentage basis by producing a receipt from landlord. The fact that in this case my father happens to be my landlord is just coincidence and my case should be treated at par with other officers who are claiming rent on percentage basis after producing receipts from their landlords and without any assessment of the rent from Municipal authorities. The drawing of H.R.A. has however been held in

abeyance from 1st January. 1971 till clarification is received from the Administration."

It was also requested that, in case relaxation was necessary on account of the fact that the petitioner's father happened to be his landlord, orders granting such relaxation might be obtained from the Government of India. On receipt of this note the Administration of the Cwpc realised that the payment of Hra to the petitioner had not been in accordance with the interpretation placed on the relevant regulation by the Government i.e. the Ag (CWM). The under Secretary to the Cwpc wrote on 8-2-1971 to the Ag (CWM). In this letter he admitted that while forwarding the earlier application of the petitioner for grant of Hra on 28-10-1969 his office had overlooked the statement contained in the petitioner's note to the effect that he was occupying the premises belonging his father on payment of rent. It was admitted that as the petitioner was residing in a house owned by his father the Hra should not have been granted on the basis of the rent receipt. The Ag (CWM) was, Therefore, requested to recover from the petitioner the Hra drawn by him from 1-10-1969 to 31-12-1970.

(5) In pursuance of the above letter the Ag (CWM) directed the Treasury Officer by a letter dated 22-4-1971 to recover from the petitioner a sum of Rs. 5,400.49 being the Hra drawn by the petitioner without entitlement in monthly Installments. There was a mistake in this letter since the amount was calculated in respect of the period from 1-10-1963 to 3-9-1966 and 10-10-1969 to 31-3-1971 whereas as already mentioned, the petitioner had stopped drawing Hra from 1-1-1971 onwards. This was subsequently rectified and the petitioner has been informed that the amount recoverable from him was Rs. 4,974.19 and not Rs. 5,400.49 as intimated earlier. In the meantime the petitioner made representations against the proposed recovery and contended that, having authorised the payment of the Hra in full knowledge of the relevant facts, it was not open to the respondents to call upon the petitioner to recover huge sums of money after such a long lapse of time, particularly when the Hra had been passed on by the petitioner to his father by way of rent. In response to this representation the Administration called upon the petitioner to furnish the municipal assessment certificate of the portion of the house occupied by him from October, 1969 so that the Hra could be" regularized .The petitioner. however, expressed his inability to furnish the municipal assessment certificate which, according to him, was also totally irrelevant in the case of residential premises taken on rent by the officer. The petitioner was also asked to furnish information as to whether the rent paid by him to his father in respect of the residence occupied by him was duly taken into account by his father for the purposes of payment of municipal tax to the Corporation and to furnish a certificate to that effect. The petitioner, however. replied to this letter also stating that he as a tenant could not be expected to know whether the landlord paid municipal taxes and, if so, on what basis. It was stated that perhaps the amount paid by him had not been taken into account but this fact should not debar the consideration of his representation. It was pointed out that had he known that

Hra would not be admissible he would have changed his residence and that to call upon him to pay a huge sum caused him difficulties and distress and requested that his representation should be considered sympathetically and the amount waived.

(6) In support of the writ petition, Sri Somasekharan urged three points : (i) In the first place he contended that the Hra paid to the petitioner was fully in accordance with the relevant rules and that the interpretation sought to be placed on the rules by the respondent was not correct ; (ii) He contended that the respondents having, with full knowledge of the circumstances, authorised the petitioner to draw the Hra, they were estopped from calling upon the petitioner to refund the amounts paid to him on account of their mistake; and (iii) That, in any event, the respondents were not justified in attempting to recover the amounts paid to the respondents after a lapse of an unreasonably long time. Learned counsel also contended that if the rules were sought to be interpreted in the manner contended for by the respondents it would result in discrimination violative of Article 14 of the Constitution. He also contended that the principle of promissory estoppel enunciated by the Supreme Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, would come to his aid. Learned Counsel also contended that the administrative instructions in pursuance of which the Hra was paid to the petitioner did not have the force of law and that even if they did not authorise the petitioner to draw the Hra drawn by him earlier, the respondents could not recover the amounts due from him in the manner in which they are seeking to do.

(7) The principal contention for consideration in the writ petition is, Therefore, regarding the correct entitlement of the petitioner to the Hra under the rules which were in force at the relevant time. It may be mentioned that so far as Hra is concerned the payment thereof was governed purely by administrative instructions issued from time to time by the Ministry of Finance of the Government of India. It is necessary to notice these chronologically in order to appreciate the position in regard to the periods with which we are concerned in this writ petition; 31-7-1947. This was the original circular issued by the Finance Department of the Government of India immediately before independence. It conveyed the sanction of the Governor General in Council to the grant of Hra to Government servants. The Hra was fixed in the case of employees of the category with which I am concerned at a percentage of pay depending upon the salary drawn and the place at which the employee was located. The Government servant was to give a certificate in a prescribed form that the sum actually spent by him on Hra is not less than 10 per cent of his pay plus the amount of allowance paid to him and that no portion of the accommodation is sublet or occupied normally by adults other than those belonging to his family. Rent was defined as "rent paid for unfurnished accommodation and will include occupier's share of municipal taxes". Paragraph 10 of this memorandum is important. It reads :

""10..AGovernment servant living in a house owned by him is also eligible for house rent allowance under these orders. In such cases the rental value of the house (as ascertained from its assessed value for municipal purposes or otherwise) should be taken as the rent paid by him for private accommodation for purposes of these orders. The controlling officer in the case of a non-gazetted employee, ...will determine the amount to be taken as the rent paid in each case on the above basis."

5-3-1948. This was a memorandum which clarified and amplified some of the portions of the earlier circular. Clause (x) of this circular reads as follows :

"(X)Persons living in a house and owned by relatives Para 10 of the D.M. applies only to persons living in houses owned by them Individuals living in houses owned by their relatives cannot be treated as owners of such houses. The position in such cases is that if the Government servant pays rent, the relationship being hardly a consideration he can draw the allowance under para 4 of the D.M. If, however, no rent is being paid he cannot claim any allowance."

9-6-1952. The memorandum issued on this date is not available. But it is seen that it laid down, inter alia, that a house owned by the wife or children of the Government servant should be treated as his own for the purposes of grant of HRA. 11-2-1955. By this memorandum the treatment given by the memorandum of 1952 to the house owned by the wife or the children was extended to the case of a house owned by the father and it was decided that "A Government servant who is residing in a house owned by his father may also similarly be treated as residing in his own house for purposes of drawal of Hra under paragraph 10 of the memorandum dated 31-7-1947. 27-11-1965. By this memorandum the earlier orders issued on the subject from time to time were superseded and a comprehensive memorandum governing the payment of Hra was issued "Rent" in this memorandum was defined as follows:

""Rent" means the charges paid by a Government servant as consideration for unfurnished accommodation occupied by him if he is a tenant and the gross rental value of the house as as with deduction of the rebate or 10 per cent on account of repairs if he is an owner."

There are certain other qualifications and restrictions with which I am not here concerned. Under paragraph 5 no Government servant can draw the Hra in exercise of the amount by which the rent actually paid by him exceeds 10% of his pay. Paragraph 7 of this memorandum is somewhat important and it reads as follows :

"7(I)A Government servant living in a house owned by him, his wife, children, father or mother shall also be eligible for house rent allowance under these orders. In such cases, the gross rental value of the house, or, it he is not in occupation of the entire house, of the portion of the house actually occupied by him. (as ascertained from its assessed value for municipal purposes or otherwise) without deduction of rebate of 10 per cent on account of repairs and

including municipal and other taxes that are legally payable by the owner other than "service taxes" levied separately and described as such, shall be taken as the rent paid by him for private accommodation for the purpose of these orders. When separate amount of assessed value is not available in respect of a portion of a house, it will be calculated proportionately with preference to the plinth area actually in occupation of a Government servant. (ii) In the case of a Government servant living in a house owned by a Hindu undivided family in which he is a coparcener, house rent allowance will be regulated with reference to the gross rental value, as in (i) above, of the portion of the house actually in his occupation and not on the basis of the rent which he claims to pay to the Manager of the Hindu undivided family.

Paragraph 8 requires every Government servant to furnish a certificate in one of the forms prescribed as annexures to these rules. Annexure-IIIA is to govern cases where the Hra was claimed on the basis of rent paid by the officers who were residing in rented houses. Annexure Iii B contains the certificate to be furnished by a Government servant for Hra in terms of paragraph 7 read with paragraph 5 of the office memorandum. This annexure contains a certificate to the effect that the petitioner is residing in a house owned by him/wife/son/daughter/father/mother/Hindu Undivided family in which he was a coparcener. It also refers to the monthly gross rental value thereof as assessed for municipal purpose or otherwise. These rules came into force with effect from 1-2-1965.

(8) Learned counsel for the respondents submitted that so far as the first period, namely 1-10-1963 to 3-9-1966 is concerned the position is governed by the circulars of 31-7-1947, 5-3-1948 and 11-2-1955. He submits that the circular dated 11-2-1955 makes it clear that where a Government servant is residing in a house owned by his father it was treated as a case where he was residing in his own house within the meaning of paragraph 10 of the 1947 memorandum. According to this paragraph the petitioner was entitled to draw Hra only on the basis of the gross rental value of the house and not on the basis of the actual rent paid by him. In such cases, according to learned counsel, it is totally irrelevant whether the officer in question occupies such a premises free of charge or on making some payment and that the mere fact that the parties choose it to call it a rent could not make any difference. So far as the second period is concerned the position is exactly similar under paragraph 7 of the memorandum of 1965. That apart where a Government servant was residing in premises belonging to his father he had to give a certificate in form Annexure-111 B. In the present case that was not done as the petitioner furnished a certificate only in form Annexure-111A. Learned counsel placed considerable emphasis on the fact that even during the protracted correspondence the petitioner had revealed a marked disinclination to disclose the assessed value of the premises. The refusal to furnish the assessed rental value of the premises clearly showed, according to counsel, that the petitioner had obtained Hra which was far in excess of the assessed value of the premises as determined by the corporation. He submitted, Therefore, that the petitioner having drawn Hra in excess of what

he was eligible for under the rules the respondents were fully within their rights in seeking to cover the same from him.

(9) On the other hand, Sri Somashekharan, learned counsel for the petitioner, submitted that the rules both sets of rules make a clear distinction between a case where Hra was claimed on the basis of rent paid and a case where Hra was permitted even though the officer in question was not paying a rent to anybody. Learned counsel submitted that the clarification contained in the office memorandum dated 5-3-1948 brings out the cardinal principle kept in mind by the authorities in granting the HRA. The principle was that wherever a Government servant paid rent in respect of the accommodation occupied by him the Hra was to be determined on the basis of the rent so paid. It was only cases in which no rent was paid that were treated in a separate category. Strictly speaking the Government could say that where an officer paid no rent he would not be eligible for any HRA. A person may not pay a rent because (a) he may be residing in a house owned by him; (b) he may be residing in a house owned by close relatives such as father, mother, wife, husband, son or daughter who may not charge any rent or (c) he may reside in a house of which he is the Joint owner such as the house of a Hindu undivided family of which he is a co-parcener. The Government decided that even in such cases Hra should be admissible. But they decided also that in such a case Hra should be determined on the basis of the gross rental value of the premises and not on the basis of a fanciful amount that may be claimed by the employee. This gross rental value was to be determined by the competent authority either on the basis of municipal assessment or on such other basis, as may be made available to it. Learned counsel submitted Therefore that the mere fact that a Government servant was residing in a house belonging to himself or to his joint family or his close relatives was not conclusive of the issue. If he lived in such a house as a tenant and paid a rent the Hra would be admissible on the basis of the house rent actually paid. If, on the other hand, he was just living in such a house then the Hra would be computed on the basis of the gross rental value as referred to earlier. Learned counsel submitted that it was this very scheme that had been carried over in the 1965 rules as well. In fact. he points out, the difference in language between sub-clause (i) and sub-clause (ii) of clause 7 of the 1965 memorandum further brings out this point. While dealing with a case where a Government servant is residing in a house belonging to his joint family the rules specifically mention that even if he claims to pay a rent to his joint family or its karta such rent would be ignored and only the gross rental value would be taken into account. This is obviously because in the case of a joint Hindu family a co-parcener living in the family is not under a legal obligation to pay a rent and if he pays or purports to pay sum rents to the joint family that is a matter which is likely to be or bound to be adjusted or compensated for at the time of partition of the joint family. Though called rent it is a payment by a co-owner of a property to the other co-owners and that is why, according to counsel, paragraph 7(ii) specifically ignores the amount paid in a case where ostensibly a member of

the joint family pays a rent to the family in respect of the portion occupied by him. The same principle cannot apply, he points out, to the case of an individual who may be occupying a house belonging to his wife, husband, father or a son. The petitioner has no legal right to stay in the house of his father and there is no legal prohibition against the father treating the son as a tenant and vice-versa. In the present case the petitioner had been stating right from the beginning that he was occupying the premises as a tenant. Rent receipts were being produced. The father had admitted that the petitioner was a tenant under him. Ear-marked portions of the house were being occupied by him sketches of which had been given to the department. It is not the suggestion of the respondents that rent paid by the petitioner was a fanciful rent or excessive or arbitrarily fixed having regard to the normal market rents in the locality. That the father was the landlord and the petitioner was the tenant under him was not a fact which was disputed by the respondents. In these circumstances, learned counsel for the petitioner submits the stand of the respondents that the petitioner could draw Hra only on the basis of the gross assessed value is not correct.

(10) On a careful consideration of the rules governing the subject I am inclined to accept the contention urged on behalf of the petitioner. I must emphasise that there is no dispute in the present case that the petitioner was a tenant under his father. At no stage of the proceedings did the the respondents doubt this fact. It is also not doubted that the petitioner did pay his father rent @ Rs. 135 during his earlier stay in Delhi and Rs. 240 during his second spell of stay in Delhi. At the first stage which was long subsequent to 1948 and 1955 the petitioner placed the concerned authorities in full knowledge of all, the facts that are relevant for the determination of the HRA. It is no doubt true that the memorandum of 1955 places a case where a Government servant occupies the residence of his father on the same basis as a case where he occupies his own residence. But the 1955 circular did not repeal or supersede the circular of 1948. The memorandum of 1948 very clearly emphasise that where a person occupies a building belonging to his relatives and pays a rent Therefore the Hra should be determine on the basis of the rent so paid. If, however, he was paying no rent at all lie could not claim any allowance: such an allowance was restricted by paragraph 10 of the 1947 memorandum only to cases where the officer occupied his own house. Having clarified in 1948 that the benefit of self-occupied houses being considered eligible for Hra would not be extended to cases of occupation of houses belonging to relatives, the Government slowly relaxed the position. They started subsequently in 1952 and 1955 that Hra on a smaller scale would be available even where the house that was occupied belonged to close relatives of the categories mentioned. If one reads all the three circulars together, it seems quite clear that what the Government was purporting to do was not to down the Hra which was available to a Government servant on the basis o" actual payment of rent but rather to enlarge the scope of Hra and to grant him an allowance on a limited basis in a case where he was occupying a house which in law did not belong to him but which could for all practical purposes be treated as his own. I

am, Therefore, persuaded to hold that the contention of the learned counsel for the petitioner that the circulars of 1947, 1948, 1952 and 1955 clearly draw a distinction between two types of cases, one where a rent is paid and the other where no rent is paid. In the first category of cases the Hra is admissible on the basis of the rent. In the second category of cases it is not admissible, except where the house belongs to the Government servant, to his close relatives described earlier or to the joint family in which he is a co-parcener.

(11) As already mentioned, the 1965 Rules do not affect any substantial change in this position. On the contrary, as emphasised by Sri Somashekharan. the contrast between the language of sub-clauses (i) and (ii) of paragraph 7 of the 1965 Rules rather supports his contention. If, as contended for by the respondents, the words "living in a house owned by him, wife, children, father or mother" can be treated as referring to a case where the Government servant resides in such a house, whether in his capacity as part owner or close relative of the owner or even as a tenant, then the clarification in sub-para 2 that in such a case the Hra should not be granted on the basis of the rent which he claims to pay to the manager of the Hindu undivided family would be totally unnecessary. Here also I am inclined to think that there is force in the two points made by Sri Somashekharan (i) that the specific exclusion under clause (ii) impliedly rules out a similar exclusion under clause (i); and (ii) that in principle also there is a difference between the two cases because where a co-parcener pays a rent to the joint family it is only a rent notionally so called whereas in the case of persons who may be otherwise related to one who had no right at all in the premises the manner of regulation of the relationship between the parties is to be determined upon by themselves and cannot be imposed from outside. It will be a totally different thing if the allegation of the department in the present case had been, that the petitioner was not a tenant at all of his father, that he was just living in the house as a member of the father's family. For instance if the respondents had pointed out that there was no ear-marked portion of the house in which he was residing, that the rent was not being regularly paid or the amount claimed paid to him by way of rent had absolutely no relation with the accommodation occupied and so on and so forth. All that the respondents have stated is that the assessment certificate of the Corporation has not been produced. I agree with Shri Mehra, learned counsel for the respondents, that the failure of the petitioner to produce the assessment certificate of the Corporation clearly shows that its production would be adverse to the petitioner. Obviously the assessed value of the premises for purposes of Corporation taxes is much less than the amount paid by way of rent by the petitioner. There is also the admission made by the petitioner himself that perhaps the father did not even include the rent paid by the petitioner so far as the Municipal Corporation is concerned. But if the construction which I have placed on the rules is correct and I think that it is, then the assessed value of the premises according to the Corporation becomes totally irrelevant. Notwithstanding the fact that the petitioner is residing in a premises belonging to his father he is claiming Hra not

on that basis but on the basis that he is a tenant and that he is paying his landlord a rent. In this view, the certificate furnished by the petitioner in form Iii A was also in order. As rightly pointed out by learned counsel for the petitioner if the petitioner were occupying some other premises and paying by way of rent an amount much in excess of its assessed value to its owner or if the landlord of the house completely suppressed the fact of the tenancy from the Municipal authorities that would not stand in the way of the petitioner getting reimbursement in respect of the rent actually paid by him. The fact that the landlord is his father should not make, in my opinion, any difference. The interpretation urged by the counsel for the petitioner is also consistent with Article 14. A differentiation between employees residing in rented houses and houses in which they have some manner of right would be based on valid classification. But a grant of Hra in all cases where a rent is paid with a denial of it merely because the landlord is the father may not be able to survive an attack based on Article 14. For the reasons discussed above, I am of opinion that the petitioner has not been granted any Hra in excess of his entitlement. I am, Therefore, of opinion that there is no case for the respondents trying to recover any of the amounts paid to the petitioner as having been wrongly paid.

(12) I would only add this. Even assuming that the contention of the learned counsel for the respondents is correct and that the present case is governed by the memorandum of 1955 and para 7(i) of 1965 memorandum as interpreted by him, it will be noticed that these regulations do not say that the Hra has to be determined only on the basis of the value assessed by the Corporation as the assessed value of the premises. Even in such cases the gross rental value of the premises has to be determined. Of course, where the Municipal figures are available it can be determined on the basis of the municipal figure. But at the same time there is nothing to prevent the competent authority from determining the gross rental value on the basis of the rents prevalent in the locality. For instance if Government servants were able to furnish to the respondents information that though the assessed value for Corporation purpose is only @ Rs. 200 p.m. the gross rental value of the premises similarly situated is Rs. 300 then there is nothing in paragraph 10 of the 1947 memorandum or para 7 of the 1965 memorandum that would disentitle such an officer from claiming Hra on the basis of the higher rent. It is well known that municipal values are not always assessed on the basis of actual rent paid. Particularly, after the decision of the Supreme Court in the case of Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others, , the municipal value has to be determined on the basis of the reasonable annual letting value and not on the basis of the actual rent the premises may fetch. The language of paragraphs 10 and 7 aforesaid do not appear to restrict the claim of Hra only to the limited concept of annual value as assessed for municipal tax purposes. In the present case it was open to the competent authority to have called for information from the petitioner regarding the gross rental value of the premises. Of course the petitioner could have also furnished it apart from merely contending that the

assessed value was not relevant and perhaps if he had furnished comparative figures of rent paid in the locality he might have been able to establish that even gross rental value within the meaning of paragraphs 10 and 7 earlier mentioned was not much less than the amount which he was paying to his father by way of rent. However, so far as this aspect of the matter is concerned there is no material on record and I am only referring to it to point out that the assumption both by the petitioner and the respondents that the determination of the house rent on the basis of paragraphs 10 and 7 above mentioned would have been necessarily disadvantageous to the petitioner may not be correct.

(13) For the reasons above mentioned I accept the contentions urged on behalf of the petitioner. In the view taken I do not consider it necessary to go into the various other contentions outlined by Shri Somashekharan and briefly referred to by me earlier. In the result, a writ of certiorari will issue quashing the letter of the AG(CWM) (respondent No. 3) addressed to respondent No. 4 and directing him to recover sum of Rs. 5,400.49 (subsequently modified as R.s. 4,974. 10) from the petitioner in monthly Installments. In the circumstances, however, I make no order as to costs.