
(1994) 05 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1517 of 1989

Shrimati Krishna Kumari

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1995) 109 PLR 351

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : G.S. Bhatia, for the Appellant; M.K. Garg, AAG, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—This judgment shall dispose of Regular Second Appeal No. 1517 of 1989 and Civil Writ Petition No. 11864 of 1991 as questions of law involved in both the cases are identical.

2. Broad facts are being taken from the Regular Second Appeal No. 1517 of 1989 titled Smt. Krishna Kumari v. State of Punjab and Ors.

3. Smt. Krishna Kumari sought a declaration to the effect that the recovery of house rent allowance for a sum of Rs. 9023.30 by the defendants is illegal, unconstitutional, ultra vires, discriminatory and does not bind the plaintiff in any manner, with a further injunction restraining the defendants from recovering this amount by way of instalments or otherwise.

4. Briefly put, the plaintiff, a teacheress posted in a Government Primary School, had been drawing house rent allowance as admissible to other Government employees since February, 1974. It is on January 24, 1983 that it came to light that she had been drawing house rent allowance in violation of the instructions contained in government letter dated February 20, 1965. When asked to explain, she stated that her husband was paying house rent for the Government accommodation allotted to him and both of them i.e. husband and wife are

government employees withdrawal of house rent allowance by her does not violate any of the government instructions. The plaintiff further contended that the order dated 20.2.1985 stopping the house rent allowance and for recovery of the amount of Rs. 9023.30 is wholly unjustified.

5. Defendants put in appearance, filed written statement and took objections with regard to the maintainability of the present suit for want of notice u/s 80 of the Code of Civil Procedure. On merit, it was stated that she was not entitled to withdraw the house rent allowance as per 1965 instructions as well as circular dated July 20,1971.

6. On the pleadings of the parties, following issues were framed:-

1. Whether the plaintiff is entitled to house rent as claimed ? OPP.
2. Whether the plaintiff is entitled to the declaration and injunction prayed ? OPP.
3. Whether the defendants were served with valid notice u/s 90 CPC ? OPP.
4. Relief.

7. The trial court on the basis of evidence adduced by the parties came to the conclusion that the plaintiff is not entitled to the house rent allowance and thus decided issues No. 1 and 2 against the plaintiff. Issue No. 3 was decided vide judgment and decree dated 3.6.1987.

8. The lower appellate Court before whom identical submissions were made by the counsel for the appellant, however, found no merit in the same and consequently affirmed the finding of the trial Court in respect of issues No. 1 and 2. Thus, the appeal too was dismissed vide judgment and decree dated 3.4.1989 of additional District Judge.

9. In the connected writ petition, Smt. Satya Wanti chose to challenge the order Annexure P-5 dated 25.6.1991 wherein it was stated that a sum of Rs. 12,772-60 is to be recovered from her having been received as house rent allowance for a period from 23.7.1986 to 31.7.1990. In this case too, she had been living with her husband who had been allotted a Government accommodation.

10. The primary submission of the learned counsel for the appellant is that the Courts below have erred in law in not properly understanding the real point in controversy. According to the counsel, as per government instructions, one of the spouse is entitled to house rent allowance. In the present case, the appellant's husband had not been drawing any house rent allowance and, in fact, he had been paying rent for this accommodation and thus withdrawal of the house rent allowance by the appellant/petitioner does not in any manner violate the government instructions. The argument in brief is that since petitioners husband is paying rent to the Central Government in lieu of the house, it should be construed that her husband is living in a rented accommodation. This way the appellant becomes entitled to get house rent allowance. It has further been

contended that stopping of house rent allowance to the appellant/petitioner is per se discriminatory and thus violative of Articles 14 and 16 of the Constitution as is clear from Annexure P-7 dated 5.5.1976 (Annexed with the CWP).

11. Letter dated 20.2.1965 is a communication from Secretary to Government Punjab, Finance Department. Deputy Commissioners and District and Sessions Judges in the Punjab and the Registrar, Punjab High Court. This deals with grant of house rent allowance to government employees. Besides stipulating First Class Cities. Second Class Cities etc. and the percentage of pay to be paid to an employee as house rent allowance, it also defines "accommodation" for the purpose of claiming house rent allowance and in what cases house rent allowance is not to be admissible. For the purpose of present controversy, relevant stipulations given in the letter dated 20.2.1965 are hereunder reproduced :-

"xx xx xx xx (b) "Accommodation" for the purpose of claiming house rent allowance means an unfurnished house not provided by the Govt.

xx xx xx xx 4(i) The house rent allowance shall not be admissible to government servant who is in occupation of accommodation provided by the Government, or who refused accommodation offered by the Government, who leaves such accommodation without the approval of the competent authority. Government servants who are at present sharing accommodation in the Government building houses will be granted house rent allowance at the rate mentioned in Para I above provided they vacate the said premises under intimation to the House Allotment Committee through proper channel.

(ii) xx xx xx xx (iii) Government servant will give a certificate in the form attached to this letter to indicate that the sum actually spent by him as house rent is not less than 10% of his pay plus the amount of house rent allowance paid to him in accordance with the scale laid down para (i) above...

(iv) xx xx xx xx (v) If both the husband and his wife are government servants the house rent allowance will be payable to only one of them, where more than one member of the family is an employee of the State Government and is occupying the same accommodation only the head of the family will be entitled to draw house rent allowance."

12. Thus the house rent allowance can be claimed only when a house has not been provided by the Government. In the present case (as well as in the civil writ petition) the appellant/petitioner is in occupation of the Government accommodation though allotted in the name of her husband. Thus to say that her husband is paying for the Government accommodation is totally a fallacious argument. This point was further clarified vide Finance Department letter Annexure R-2 dated 20.7.1991 which reads as under :-

"11.11 Grant of House Rent Allowance to Government employees -According to instructions contained in Punjab Govt. letter No. 956-FCW-65/1548 dated 20th

February, 1965 (as amended from time to time) a Government employee is not entitled to the grant of House Rent Allowance if he/she resides in an accommodation allotted to his wife/her husband or to his/her parents/child by the Government. Recently a case has come to the notice of Government where Govt. employee claimed house rent allowance though his wife has been allotted Government accommodation on the plea that he was not living with her because of insufficient accommodation and was living separately and was paying separate rent.

Government's intention in not granting house rent allowance where one of the spouses is allotted Government accommodation is that when a Govt. employee is allotted accommodation he is expected to live in that accommodation with his family. He/she is not expected to live in a separate house.

It is, therefore, pointed out that house rent allowance should not be allowed to a Government employee in case his wife/her husband has been allotted Government accommodation at the same station by the State Government, Central Government, autonomous public undertaking or semi-government organisation, whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her."

13. Thus the instructions of 1965 and further clarification given in letter dated 20.7.1991 leaves no manner of doubt that when one of the spouse has been allotted Government accommodation, the other member is not entitled to withdraw house rent allowance.

14. During the course of arguments, learned counsel for the appellant made repeated reference to one Hem Raj who was posted as a Teacher in Government High School, Nurpur Sethan, Ferozepur, a town within 10 Kms. of the international border and whose wife was an employee of the Central Government and working in local telephone exchange and in that case both of them were drawing house rent allowance. This matter was examined by the concerned authorities who justified the withdrawal by both the spouses on the ground that the Punjab Government instructions with regard to grant of house rent allowance to employees posted in the border area no where limits that house rent allowance is to be given to one even when both of them are entitled. This case has no applicability to the facts of the present case. That was a special concession given to the person posted in the border area within 10 miles belt of the international border. Thus, this also does not advance the case of the appellant in any manner.

15. No other point has been pressed or claimed.

16. Admittedly, the appellant in Regular Appeal and the petitioner in the Civil Writ Petition have drawn the house rent allowance though not entitled. There is no dispute with regard to the amount to be recovered from each of them. The authorities, in fact, have been quite reasonable as the amount is being recovered in monthly instalments. Thus, I find no ground to interfere with the well

considered judgment and decree of the Courts below nor in the contentions raised in Civil Writ Petition and consequently dismiss the same. Parties will, however, bear their own costs.