

**(1995) 04 PAT CK 0023**

**In the Patna High Court**

**Case No :** C.W.J.C. No's. 9157 of 1991, 11855 of 1992, 1216 and 5372 of 1993 and 6660 of 1994

Smt. Abala Biswas @ Smt. Abala Bose,

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

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**Date of Decision :** 24-04-1995

**Acts Referred:**

**Citation :** (1995) 2 BLJR 1080 : (1995) 2 PLJR 34

**Hon'ble Judges :** S.N. Jha, J

**Bench :** Single Bench

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## **Judgement**

S.N. Jha, J.—Whether employees of the State Government sharing accommodation with their spouse are entitled to House Rent Allowance (HRA) is the question for consideration in these cases. The question is to be considered in the context of the Bihar State Employees (House Rent Allowance) Rules 1980 (hereinafter referred to as "the Rules"only).

2. The Rules provide for grant of HRA to the employees of the State Government. Although all State Government servants are eligible to get the allowance the right is hedged by conditions. Many relevant foundational facts in this regard have not been stated in the writ petitions; for example, it is riot said in any of the writ petitions that the petitioners had applied for government accommodation which has not been provided a condition precedent under Rule-5(a). It appears that the government servants are getting the allowance as a matter of course. However, the purpose of this observation is not to find fault with the petitioners" case but to point out that the right to get the allowance is not unconditional and absolute. A large number of cases involving the point are said to be pending in this Court and as such it would only be proper to decide the point on merit rather than go by the technicalities.

3. The petitioners have been denied the HRA on the ground that their spouses are getting it and, therefore, it terms of Rule-6(b) they are not entitled to the same. It may be stated here that except petitioner No. 2 of C.W.J.C. No. 6660 of

1994 Azra Begum whose husband, employed as Oath Commissioner in the High Court, has been provided with government accommodation, no other petitioner's spouse has been provided with such accommodation. They are said to be living in private rented house with their spouse. Counsel representing the petitioners in the said writ petition in view of the provisions of Rule 6(c) of the Rules very fairly did not press her claim.

4. As the dispute turns on the interpretation of Clause (b) of Rule 6 it would be convenient to quote the said clause which runs as follows :

(b)(i). If the Government servant sub-lets or shares a part of his accommodation with one or more adults, not belonging to his family, whether Government servant (s) or not a reduction of 40 per cent or the actual rent charged by him from the sub-tenant/co-sharer, whichever is higher, shall be made from the rent actually paid by him to the landlord for purpose of computing the amount of house rent allowance admissible to him. A reduction of 40 per cent shall also be made where a part of the accommodation hired by the Government servant for which he claims house rent allowance is used for other than bonafide residential purposes.

(ii) If the sub-tenant of co-sharer is also a Government servant, house rent allowance will be admissible to him also the amount of the allowance being calculated on the rent actually paid by him to the main tenant.

Note.--1. Keeping of servant in the house shall not be deemed to be sub-letting or sharing a part of the accommodation.

Note.--2. An exception of the above rule in cases where a Government servant who shares his/her accommodation with his wife/her husband/parents/son/daughter unmarried sister who is also an employee of Central Government/State Government/Autonomous Public Undertaking/Semi Government Organisation such as a Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India etc. he/she (Government Servant) may be allowed the option to draw house rent allowance without a reduction of 40 per cent from the rent actually paid by him/her, subject to the condition that the other spouse/parent/son/daughter does not draw any house rent allowance.

Note.--The reduction of 40 per cent referred to Clause (b)(i) will not be made where spouse/parent/son/daughter/unmarried sister is/are employed in the private sector or are self-employed or pensioner or/and is/are having income exceeding Rs. 250/-per month from any property/investment.

5. From perusal of the above provisions it would appear that where the Government servant concerned sub-lets or shares a part of the accommodation with one or more adults and the sub-lessee or co-sharer is not a family member (whether Government-servant or not) a reduction of 40 per cent or the actual rent charged by him from such sub-lessee or co-sharer, whichever is higher, is to be made from the rent actually paid by him to the landlord. If that co-sharer etc.

is a Government servant he too will be entitled to the HRA. Where, however, the co-sharer etc. is a Government servant or an employee in a Public Undertaking, Semi-Government Organisation etc. and also a member of the family as mentioned in Note-2, there will be no such reduction of 40 per cent if such family member does not draw the allowance. In that situation the Government servant concerned will get the whole of the allowance as admissible under the rules. If the family member is employed in the private sector or is self-employed or a pensioner, upto certain income, there will again be no reduction of 40 per cent.

6. It would thus appear that Clause (b) of Rule-6 prescribes a general rule of reduction of 40 per cent (or the actual rent charged by him, whichever is higher) where he shares part of the accommodation with some adult, whether Government servant or not. As an exception to the said rule, where such person happens to be his or her spouse, parents, son, daughter, unmarried sister who is also a Government servant under the State or the Union or an employee of any undertaking etc., he is not liable to such reduction of 40 per cent provided the said member of the family opts not to draw the house rent allowance himself or herself. It is, therefore, not correct to say, as contended on behalf of the respondents, that where the spouse or other specified member of the family also a Government servant etc. no. House Rent Allowance is allowable at all.

7. No restriction can be put on the rights of the spouse (or other members of the family) who may be governed by their own service conditions. They cannot be compelled to forgo their rights.

8. It is not necessary to go into the rationale of the provision of Rule 6(b) restricting the quantum of HRA as there is no challenge to the provision. The only question is whether the Government servant concerned can be denied the right to receive the allowance completely merely because the spouse (or other member of the family) is also employed under the Government or in any undertaking etc. In my considered opinion there is nothing in the rule which does away with the right to receive the house rent allowance where both the husband and wife share the accommodation. Rule 6(b) merely puts restriction on the quantum of the allowance and the Notes provide for exceptions where such restriction is not applicable. As I have said the spouse may be governed by his or her service conditions which may or may not be more favourable to those of the concerned Government servants whose entitlement is under challenge. The exception clause is not to be read as substantive provision and even otherwise it is not unlikely that the spouse would opt not to receive the HRA as may be available to him or her under the relevant rules. I do not think, why the spouse would forgo the claim and any such instance can be cited. The provisions of Note-2, therefore, would virtually remain a dead letter. But this in my view will not affect the rights of the Government servant concerned and he would continue to be governed by the main rule as contained in Clause (b) putting certain restrictions on the quantum of allowance.

9. These writ petitions are accordingly disposed of with a direction to the

concerned authorities to consider the claim of the petitioners for grant of house rent allowance in the light of observations made above and issue appropriate orders at the earliest.