
(2002) 12 JH CK 0064
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3562 of 2002

Smt. Bhagwati Devi	Vs	APPELLANT
The State of Jharkhand and Others		RESPONDENT

Date of Decision : 10-12-2002

Acts Referred:

Citation : (2003) 1 JCR 358

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : A.K. Choudhary, for the Appellant; I. Sen Choudhary, SC-III, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—The petitioner and her husband, Kailash Kapri both were in the services of the State. After retirement of petitioner, when the respondents sanctioned unutilized leave of 240 days, directed to deduct a sum of Rs. 25,954/- from the said amount vide memo No. 277 dated 11th February, 2002 on the ground that the petitioner has been illegally paid such amount against the head of house rent allowance.

2. The case of the respondent as appears from the enclosures is that the husband of petitioner, who was also in the Government service, having received the house rent allowance, the petitioner was not entitled for the same.

3. It is not in dispute that neither the husband, nor the petitioner were residing in any Government quarters. Both of them on their own right were getting salary and other allowances including house rent allowance. It is only after the retirement of petitioner, such house rent allowance ordered to be recovered from the leave encashment.

4. Almost similar matter fell for consideration before the Patna High Court in Smt. Abala Biswas @ Smt. Abala Bose v. State of Bihar and Ors., reported in 1995 (2) BLJR 34. Therein the Court observed as follows :

"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 is 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."

5. The respondents have not stated in their order 11th February, 2002 that the petitioner misrepresented before the authorities and withdrawn any amount. In this background (sic) the respondents cannot recover any amount from pensionary benefits as per the decision of the Supreme Court in the case of Sahib Ram Vs. State of Haryana and Others, .

6. In view of the aforesaid decisions, as the impugned order contained in memo No. 277 dated 11th February, 2002 cannot be sustained, it is set aside. The respondents are directed to pay back the petitioner the full leave encashment amount and refund the amount recovered within one month from the date of receipt/production of a copy of this order, failing which they will be liable to pay the interest @ 5%.

7. The writ petition is allowed, with the aforesaid observations/directions.