

(2023) 03 KL CK 0220
In the High Court Of Kerala
Case No : Writ Appeal No. 924 Of 2022

State Of Kerala

APPELLANT

Vs

Dr. A. Augustine

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2023) 03 KL CK 0220

Hon'ble Judges : P.B.Suresh Kumar, J;Sophy Thomas, J

Bench : Division Bench

Advocate : B.Vinitha, P.T.Dinesh, Robson Paul, Manu.S

Final Decision : Allowed

Judgement

P.B.Suresh Kumar, J.

1. This appeal is directed against the judgment dated 12.7.2021 in W.P.(C) No.21677 of 2012. The appellant is the State. Parties and documents are referred to in this judgment for convenience, as they appear in the writ petition.

2. The petitioner was a teacher in the Kerala Agricultural University (the University). He was working in the Headquarters of the University situated at Vellanikkara within the limits of Madakkathara Panchayat in Thrissur District. Madakkathara Panchayat is a Panchayat adjoining Thrissur Corporation which is classified by the Central Government as a 'B2' city. The matter relates to the claim made by the petitioner for House Rent Allowance (HRA) and City Compensatory Allowance (CCA) as applicable to the employees working in the offices situated within the limits of Thrissur Corporation.

3. HRA and CCA which are part of the salary of employees of the University are being disbursed in accordance with the orders issued by the State Government from time to time based on the recommendations of the Pay Revision Commissions. The teachers working in the Headquarters of the University were being disbursed HRA and CCA as applicable to State Government employees

working in offices within Thrissur Corporation till the implementation of the recommendations of the 8th Pay Revision Commission, as the Pay Revision Orders issued earlier contained a specific provision to the effect that employees working in offices situated within five kilometers from B2 cities are also entitled to HRA at the rate admissible to the employees situated in offices within the limits of such cities. However, in Ext.P5 order issued by the State Government based on the recommendations of the 8th Pay Revision Commission, it is stated that the rates of HRA provided for therein will apply only to employees working in offices situated within the City/Municipal limits. In other words, the provision made in the earlier Pay Revision Orders to the effect that the employees working in the offices situated within five kilometers from B2 cities are entitled to HRA at the rate admissible to the employees working in offices situated in such cities, has been given a go-bye. Ext.P6 is the order issued by the University to give effect to Ext.P5 order. As a result of Exts.P5 and P6 orders, the petitioner and similarly placed officers of the University are able to draw HRA only as provided for in Ext.P5 order as applicable to towns not in B Class city/C Class city or town. Subsequently, the Government issued another order revising the pay of the State Government employees including the employees of the University based on the recommendations of the 9th Pay Revision Commission. Ext.P13 is the order issued by the State Government in this regard on 26.02.2011. In Ext.P13 also, the provision made for payment of HRA was identical to the provision made in Ext.P5 order.

4. On 06.08.2011, the General Council of the University passed a resolution requesting the Government to extend to the employees in all establishments of the University, HRA, as applicable to the nearest Municipal Corporation. Ext.P12 is the decision taken by the General Council of the University in this regard. Based on Ext.P12, the University made a representation to the Government. The said representation was rejected by the Government in terms of Ext.P15 order. The writ petition was instituted challenging Exts.P5 and P13 Pay Revision Orders, to the extent the same deals with payment of HRA based on the location of the office and Ext.P15 order of the Government rejecting the representation made by the University based on the decision of its General Council. The petitioner also sought a declaration in the writ petition to the effect that non-providing of HRA and CCA to him as applicable to employees working in offices located within the Thrissur Corporation is illegal, arbitrary and discriminatory.

5. The case set out by the petitioner in the writ petition is that there is no justification for denying the benefit of HRA as applicable to Thrissur Corporation to the employees working in the Headquarters of the University at Vellanikkara, as the said place is lying adjoining to the boundary of Thrissur Corporation and as the employees working in other establishments of the University which are situated within the limits of Thrissur Corporation, such as Agricultural Technology Information Centre, Communication Centre, Central Training Institute, Kerala Agricultural University Press, Office of the Directorate of Extension etc. are able to receive HRA and CCA as applicable to Thrissur Corporation.

6. A counter affidavit was filed by the State in the writ petition contending mainly that the admissibility of HRA based on the place in which the institution is situated is a recommendation made by the Pay Revision Commission and the State Government has nothing to do with the classification of geographical areas such as cities and towns. It was also pointed out by the State in the counter affidavit that the State Government has only adopted the Central Government classification for grant of HRA.

7. The learned Single Judge took the view that inasmuch as the employees working in other establishments of the University situated within the limits of Thrissur Corporation are drawing HRA and CCA as applicable to Thrissur Corporation, all of them will have to be treated alike and consequently, allowed the writ petition, quashed Exts.P5 and P13 orders to the extent the same are impugned in the writ petition and declared that the petitioner is entitled to HRA and CCA as applicable to employees of the State Government working in offices situated within the limits of Thrissur Corporation. The State is aggrieved by the said decision of the University and hence, this appeal.

8. Heard the learned Government Pleader as also the learned counsel for the petitioner in the writ petition.

9. The learned Government Pleader contended that the decision to grant HRA based on the location of the office cannot be said to be bad on any grounds whatsoever, much less on the ground of violation of the doctrine of equality. It was also argued by the learned Government Pleader that merely for the reason that earlier Pay Revision Orders contained a provision to the effect that employees working in establishments situated in five kilometers from the limits of B2 cities are entitled to the same HRA and CCA as applicable to employees working in establishments within such cities, is no ground for the petitioner to contend that the provisions in Exts.P5 and P13 orders to the effect that HRA as applicable to the location of the office alone is admissible, are invalid. It was conceded by the learned Government Pleader that employees of the University working in establishments other than the Headquarters of the University which are situated within the limits of Thrissur Corporation, are drawing HRA and CCA as applicable to State Government employees working in establishments situated within Thrissur Corporation. According to the learned Government Pleader, those employees of the University and employees working in the Headquarters of the University form two different classes altogether and treating them differently, would not violate the doctrine of equality.

10. Per contra, the learned counsel for the petitioner in the writ petition vehemently contended that so long as the employees of the University working in establishments adjoining the Headquarters of the Universities are drawing HRA and CCA as applicable to the employees of the State Government working in establishments situated within the limits of Thrissur Corporation, there is absolutely no justification to deny the said benefits to the employees of the Universities working in its Headquarters. On a query from the Court, the learned

counsel for the petitioner conceded that no part of the Headquarters of the University is situated beyond the territorial limits of Madakathara Panchayat. It was also argued by the learned counsel that in an identical case, the Government has extended to the staff of Nirmalagiri College, Kannur, HRA as applicable to establishments situated in the adjoining Municipal area.

11. We have examined the arguments advanced by the learned counsel for the parties on either side.

12. There is no dispute between the parties in this case on essential facts. As noted, HRA and CCA which are part of the salary of employees of the University are being disbursed in accordance with the orders issued by the State Government from time to time based on the recommendations of the Pay Revision Commissions. As per Exts.P5 and P13 orders issued by the State Government in this regard, employees of the State Government are entitled to HRA and CCA as fixed in the said orders with reference to the location of their offices. In the light of Exts.P5 and P13 orders, the petitioner who was a teacher in the Headquarters of the University situated within the limits of Madakkathara Panchayat is entitled to receive HRA only as applicable to employees of State Government working in establishments other than towns which are not classified by the Central Government as B Class city/C Class city or town. As noted, the case of the petitioner is that inasmuch as Madakkathara Pachayat, within whose limits the Headquarters of the University is situated, is a Panchayat located adjoining to the boundary of Thrissur Corporation and inasmuch as the employees working in other establishments of the University situated within the limits of Thrissur Corporation are being disbursed HRA and CCA as applicable to Thrissur Corporation, there is no justification in denying the benefit of HRA as applicable to Thrissur Corporation to the employees working in the Headquarters of the University. The argument of the petitioner is that denial of HRA and CCA to the petitioner as applicable to employees of the State Government working in establishments situated within the limits of Thrissur Corporation would infringe the fundamental right guaranteed to the petitioner under Article 14 of the Constitution.

13. The short point that arises for consideration in this appeal is as to whether the petitioner has made out a case of violation of fundamental right guaranteed under Article 14 of the Constitution in the context of the decision taken by the State Government to extend HRA with reference to the location of the office of the employees concerned.

14. A case similar to that of the present one was dealt with by the Apex Court in State of Karnataka v. Mangalore University Non-Teaching Employees' Assn., (2002) 3 SCC 302. The campus of Mangalore University is situated in a place called Konaje, five kilometers away from the limits of Mangalore City Corporation. In an order issued identical to Exts.P5 and P13 orders fixing the HRA and CCA payable to State Government employees, the State of Karnataka provided that the peripheral area falling within eight kilometers from the

boundaries of Bangalore City Corporation would be treated as part of the Bangalore City Corporation for the purpose of grant of HRA and CCA. An organisation of the employees of the Mangalore University challenged the orders issued by the State Government in this regard as discriminatory in the light of the benefits given to the establishments situated within eight kilometers from the periphery of Bangalore Corporation. Though a Division Bench of the Karnataka High Court accepted the said case of the employees of the Mangalore University, the said decision was reversed by the Apex Court in Mangalore University Non-Teaching Employees' Assn. Paragraphs 9 and 10 of the decision of the Apex Court in the said case read thus:

"9. Before dealing with the argument based on Article 14, we may advert to the comment of the Division Bench that the payment of HRA and CCA is not in the nature of concession as opined by the learned Single Judge. True, as pointed out by the Division Bench, HRA and CCA, which are components of total salary undoubtedly form part of conditions of service and it may not be accurate to describe them as concession. Probably, the learned Single Judge treated it as a concession for the reason that the benefit was being given over and above what was contemplated by the rules embodied in GO No. 67 dated 4-5-1990. Be that as it may, the fact that HRA and CCA are part of conditions of service does not lead the respondents anywhere for the simple reason that the conditions of service can be unilaterally altered so long as such action is in conformity with legal and constitutional provisions. Ultimately, therefore, the issue turns on the question whether Article 14 is violated for not extending the benefit of higher scale of allowances admissible to 'C' Class city employees or by withdrawing a benefit which was being given under the ad hoc orders issued from time to time.

10. In considering the question from the standpoint of Article 14, it is to be borne in mind that the impugned orders of the Government dated 13-2-1996, 5-3-1997 and 24-5-1997 do not, by themselves, fall foul of Article 14. These orders were issued only to rectify the mistake that was committed in extending the benefit of HRA and CCA applicable to 'C' Class city to the Mangalore University employees. As already noticed, the entitlement to HRA/CCA arose essentially from GO No. FD : 67 : SRP : 89 dated 4-5-1990. Applying the rules contained in that GO, the employees of Mangalore University will only be entitled to draw the said allowances at the meagre rate applicable to 'E' Class station because the place where Mangalore University is located comes under 'E' Class. To repeat, Konaje is not included in Mangalore Urban Agglomeration. The grievance of the respondents, therefore, arises on account of that. However, the respondents have not assailed the GO dated 4-5-1990 on the ground that non-inclusion of Konaje in Mangalore Urban Agglomeration ('C' Class) is an instance of inequality arising from lack of proper classification or that there is an element of arbitrariness in specifying the places comprised in Mangalore Urban Agglomeration. The limited challenge to the GO of 1990 which received approval of the Division Bench of the High Court was on the ground that there was a discrimination as between the employees working in peripheral area of

Mangalore City Corporation and Bangalore City Corporation. In other words, the respondent-writ petitioners have built up their plea of violation of Article 14 by taking the limited ground that the same benefit as was conferred by para 2.6 on the employees posted to work in any place situated within a distance of 8 km from the periphery of Bangalore City Corporation limits (though not part of Bangalore Urban Agglomeration) ought to have been extended to the employees working within the same peripheral area of Mangalore City Corporation, even if their place of work was outside Mangalore Urban Agglomeration. We are unable to concur with the view expressed by the Appellate Bench of the High Court that the same yardstick should have been applied to the employees residing within the limits of Bangalore City Corporation and Mangalore City Corporation, both of whom are posted to work outside the Urban Agglomeration. The contention that the criterion of 8 km limit from the periphery of municipal limits should be uniformly applied in the case of all urban areas irrespective of their categorization, fails to take note of ground realities. Such extension up to 8 km, be it noted, is peculiar to Bangalore city only. Bangalore which is the capital of the State of Karnataka is classified as 'A' class city. It cannot stand in comparison with Mangalore city. The manner of spread-over of offices, the pattern of development and the problems relating to housing and habitation will not be the same. If 8 km yardstick is prescribed in the case of Bangalore city, it does not mean that the same criterion should be applied for all other cities in the State of Karnataka. The complaint based on Article 14 of the Constitution cannot be judged by adopting a doctrinaire approach or by having regard to individual cases. It is not prudent or pragmatic to insist on a mathematically accurate classification covering diverse situations and all possible contingencies in view of the inherent complexities involved in fixing the scales of allowances based on the places of work. It is pointed out in the "additional ground" filed in SLP that the State Government has adopted the Central Government's policy with regard to the pattern of regulation of HRA and CCA in respect of the employees working beyond the corporation/city municipal limits. While formulating such rules it is difficult to envisage all situations and facts peculiar to a few places here and there. A legislative provision or an executive order of general application does not become unconstitutional merely because, in its actual application, it turns out to be disadvantageous or inequitable to certain individuals or a small section of people. That is not to say that the Government should not take note of individual cases of hardship and afford relief wherever such relief is genuinely needed; but, the rule or the provision does not become bad or obnoxious to Article 14 for the reason that the criterion adopted in the case of 'A' Class city is not extended to 'B' or 'C' Class city. If, as stated, by the learned Senior Counsel for the respondents, some of the members of the university staff are compelled to reside outside the campus by reason of non-availability of residential quarters, the respondents have a genuine grievance and on the university authorities or the respondent-Association approaching the Government, we have no reason to think that the Government will not give an earnest consideration to the problem."

As in the case on hand, the employees in the campus of the Mangalore University were also previously enjoying the benefit of HRA and CCA as applicable to establishments within the limits of Mangalore Municipal Corporation in terms of the provisions of the orders issued by the State Government then in force. As explicit from the extracted paragraphs of the judgment, the view taken by the Apex Court in the said case is that the same is of no consequence inasmuch as the State Government is entitled to alter unilaterally the conditions of service of its employees, including the entitlement for HRA and CCA as long as such an action is in conformity with the legal and constitutional provisions, and the impugned orders of the State Government do not fall foul of Article 14 merely on account of the said reason. It was also held by the Apex Court in the said case that such an order cannot be challenged as discriminatory and violative of Article 14 of the Constitution on the ground that peripheral areas of another city are treated as part of the Corporation for the purpose of extending HRA and CCA to employees working in establishments situated in such areas. It was also held by the Apex Court in the said case that the complaint based on Article 14 of the Constitution cannot be judged by adopting a doctrinaire approach or having regard to individual cases and it is not prudent or pragmatic to insist on a mathematically accurate classification covering diverse situations and all possible contingencies in view of the inherent complexities involved in fixing the scales of allowances based on the place of work. It was also held by the Apex Court that while formulating such rules, it is difficult to envisage all situations and facts peculiar to a few places here and there and a legislative provision or an executive order of general application does not become unconstitutional merely because, in its actual application, it turns out to be disadvantageous or inequitable to certain individuals or a small section of people. It was also clarified by the Apex Court in the said case that the same does not mean that the Government should not take note of individual cases of hardship and afford relief wherever such relief is genuinely needed; but, it was held that the rule or the provision does not become bad or obnoxious to Article 14 for the reason that the criterion adopted in the case of 'A' Class city is not extended to 'B' or 'C' Class city.

15. As in the case of Mangalore University Non-Teaching Employees' Assn., Exts.P5 and P13 orders are not under challenge in this writ petition also on the ground that the non-inclusion of Madakkathara Panchayat is an instance of inequality arising from lack of proper classification or that there is an element of arbitrariness in specifying the places to be brought under Thrissur Corporation. The petitioner cannot have any such case as the State Government has nothing to do with the same and for the geographical segregation, it has only adopted the segregation made by the Government of India. On the other hand, as noted, the case set out by the petitioner is only that inasmuch as Madakkathara Pachayat, within whose limits the Headquarters of the University is situated, is a Panchayat located adjoining the boundary of Thrissur Corporation and inasmuch as the employees working in other establishments of the University situated within the limits of Thrissur Corporation are being disbursed HRA and CCA as

applicable to employees in establishments situated in Thrissur Corporation, there is no justification for denying the benefit of HRA as applicable to Thrissur Corporation to the employees working in the Headquarters of the University. As rightly argued by the learned Government Pleader, in the absence of a case for the petitioner that non-inclusion of Madakkathara Panchayat is an instance of inequality arising from lack of proper classification or that there is an element of arbitrariness in specifying the places to be brought under Thrissur Corporation, the employees of the University working in establishments situated within the limits of Thrissur Corporation and employees working in establishments of the University situated outside the limits of the Thrissur Corporation, form two different classes and there is no illegality in treating them differently and the petitioner cannot make out a case of violation of Article 14 of the Constitution on that basis. We are unable to accept the view taken by the learned Single Judge that employees working in an establishment are to be treated alike in the matter of providing HRA, notwithstanding the location of their respective offices. The said view omits to take note of the fact that different offices under one establishment may be located in the heart of a city as also in a remote place in a village and such a stand would preclude establishments from treating the employees in such offices differently. No doubt, in the instant case, Madakkathara is a Panchayat situated adjoining to Thrissur Corporation, but on that sole ground, it cannot be said that the decision of the State Government is violative of Article 14 of the Constitution, for as observed by the Apex Court in the case referred to above, classifications cannot be made with a mathematical precision covering diverse situations and all possible contingencies in view of the inherent complexities involved in fixing the scales of allowances based on the place of work. Needless to say, the petitioner who is admittedly a person working in an establishment situated outside Thrissur Corporation, cannot claim parity with the employees of establishments situated inside the city corporation in the matter of receiving HRA. We take this view also for the reason that HRA is only an allowance and it has nothing to do with the place of stay of the employee.

16. We do not find any merit in the argument advanced by the petitioner based on the order issued by the State Government in the context of the staff of Nirmalagiri College also. The specific contention taken by the State in the counter affidavit filed in the matter in this regard is that a part of the buildings of the said college is situated in a Municipal area and the rest is situated in a Panchayat area and it is on account of the said reason that Government has treated the employees of the said institution as one class for the purpose of extending HRA. The said case, according to us, has nothing to do with the case on hand.

In the result, the writ appeal is allowed, the impugned judgment is set aside and the writ petition is dismissed.