

(2014) 11 AHC CK 0053

In the Allahabad High Court

Case No : Special Appeal Defective No. 967 of 2014

State of U.P. and Others

APPELLANT

Vs

Narendra Pal Singh and Others

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 11 ADJ 140 : (2015) 1 UPLBEC 138

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Pradeep Kumar Singh Baghel, J

Bench : Division Bench

Advocate : Udai Chandani and Amrit Raj Chaurasiya, Advocates for the Respondent

Judgement

1. This special appeal arises from a judgment and order of the learned Single Judge dated 8 November 2013 and an order passed in a review petition dated 15 September 2014. The appellants are Head Constables or, as the case may be, Constables in the Provincial Armed Constabulary (PAC). A writ petition had been filed before a learned. Single Judge by 237 Head Constables/Constables, seeking the payment of House Rent Allowance (HRA) on the basis of a Government Order dated 14 June 1999, on the ground that they had not been provided official accommodation. That writ petition was disposed of by a learned Single Judge by an order dated 8 December 2010. The learned Single Judge was of the view that the grievance should be examined by the Principal Secretary (Home) of the State Government and that in order to avoid further litigation, it was desirable for the State to issue a circular either for the payment of HRA to Head Constables/Constables, or if it was not to be so provided, by indicating the reasons for the decision. Following the order of the learned Single Judge dated 8 December 2010, the State Government issued a circular on 25 April 2011 to the effect that the Constables who are housed in barracks would not be paid HRA. Thereafter, a representation was submitted to the State Government which was rejected in the month of February 2012 by the Commandant 44th Battalion PAC, Meerut. That

led to the filing of a writ petition before the learned Single Judge, seeking a quashing of the decision of the Commandant. Besides, a mandamus was sought to the State to pay HRA to the writ petitioners together with arrears in accordance with two Government Orders respectively dated 11 June 1999 and 8 December 2008. These two Government Orders apply generally to the employees of the State. The writ petition was allowed by the learned Single Judge by a judgment and order dated 8 November 2013 in the following terms:

"In the result, the writ petition is allowed. The impugned order is quashed. The State Government in particular and all the respondents in general are directed to provide appropriate H.R.A. to all the police officials including the petitioners, who are made to stay in barracks" and are not allotted appropriate residential accommodation" commensurating their status, rank and as per their entitlement. No costs."

2. Prior to the aforesaid decision of the learned Single Judge, a circular was issued by the State Government on 19 October 2013 under which a provision was made for the payment of Family Accommodation Allowance (FAA) to employees of the police department who had been provided accommodation in barracks. As a matter of fact, it appears that the Sixth Pay Commission (SPC) had, in the course of its recommendations, dealt with the issue as to whether HRA should be provided to personnel of Central Reserve Police Force (CRPF) who had not been allotted rent free accommodation. The recommendation of the SPC provided as follows:

"Recommendations--

CILQ

7.19.42, Presently, Compensation in lieu of Quarters (CILQ) is allowed to 100% personnel in the Subordinate Officers (SOS) grade in all CPMFs barring CRPF where only 25% of the personnel in the grade are eligible for which allowance. CRPF has demanded that the facility should be extended to all the SOs in their case as well. The Commission finds merit in this demand. It is recommended that the facility of CILQ should be allowed to 100% personnel in the SOs grade in CRPF as well. Another demand has been made to extend House Rent Allowance (HRA) to all the CPMFs personnel who have not been allotted rent free accommodation or are eligible for CILQ. CILQ is given to a segment of force personnel as per the authorized strength who have not been provided rent-free family accommodation at the duty station. CILQ includes the element of HRA and license fee as per prescribed rates. Personnel who are not eligible for either rent free accommodation or CILQ are expected to stay in the non-family barracks from the functional requirement. While staying in non-family barracks on functional considerations is justified, it may not be appropriate to deny any compensation for housing the family of these personnel. HRA at normal rates cannot be paid to these personnel as they are staying in barracks provided by the Government. However, justification exists for providing a separate family

accommodation allowance for housing the family members of this category of employees. In consonance with the recommendations made for similarly placed defence personnel, the Commission recommends that a new Family Accommodation Allowance at the lowest rate of HRA should be paid to all the CPMF's personnel who are not eligible for either rent free accommodation/HRA or CILQ. The rates of this allowance will increase by 25% each time the price index increases by 50%."

3. In pursuance of the recommendation of the SPC, eventually, the State Government issued its Circular dated 19 October 2013 as noted above. The circular of the State Government dated 19 October 2013 was not placed before the learned Single Judge when the writ petition was allowed on 8 November 2013. Against the decision of the learned Single Judge, a special appeal was filed by the State. The special appeal was allowed by a Division Bench of this Court on 22 April 2014 to the extent as indicated in the judgment. The Division Bench noted that in the grounds of appeal, the State placed reliance on its decision dated 19 October 2013 which provided for a Family Accommodation Allowance to those Constables and Head Constables who had been provided accommodations in barracks. The Division Bench noted that it was an admitted position that the decision of the State was neither annexed before nor placed for the consideration of the learned Single Judge. The judgment and order of the learned Single Judge proceeded only on the basis that barracks could not be treated as residential accommodation and the denial of HRA would be in violation of Articles 14 and 16 of the Constitution. Eventually, while allowing the special appeal to the extent that it did, the Division Bench in its judgment dated 22 April 2014 observed as follows:

"7. Since the question raised in the writ petition is going to affect thousands of police personnel of the rank of Constables and Head Constables, who have been provided accommodation in barracks, we find it appropriate to remand the matter to learned Single Judge. It will be open to the State appellants to file an appropriate application annexing therewith the Government Order dated 19.10.2013 or any other order which may be relevant for the decision of the issue of payment of house rent allowance to whose employees of the police department, who have been provided barracks.

8. Considering the importance of the matter and complication which may arise if the house rent allowance is paid under the judgment dated 8.11.2013, we also find it appropriate to direct that until decision of the writ petition after the remand the operation of the order dated 8.11.2013 shall remain stayed. An affidavit annexing the Government Order dated 19.10.2013 or any other Government Orders which may concern the issue may be filed by the State Government before learned Single Judge within one month.

9. The Special Appeal is allowed to that extent as indicated above."

4. Following the judgment of the Division Bench, the State filed a review petition

before the learned Single Judge. The learned Single Judge has declined to entertain the review petition on the ground that the State had sought to re-argue the case on merits which was not permissible in law, having due regard to the parameters of the jurisdiction in review. In the view of the learned Single Judge, no ground for review was made out and hence the review petition was dismissed on 15 September 2014.

5. On behalf of the State, it has been submitted that the Division Bench in its judgment dated 22 April 2014 allowed the special appeal in part and had remanded the proceedings to the learned Single Judge, having due regard to the fact that the issue raised would affect thousands of police personnel of the rank of Constables and Head Constables in the State. While remanding the proceedings, the Division Bench directed that the order of the learned Single Judge dated 8 November 2013 shall remain stayed.

6. In this background, it has been submitted that the learned Single Judge should have taken a clear view rather than a technical view of the matter in declining to entertain the review petition filed by the State. The learned Single Judge has, by the original judgment, allowed the writ petition in its entirety, granting the claim for the payment of HRA together with arrears. The date from which the arrears are payable has not been specified.

7. On the other hand, the learned Senior Counsel appearing on behalf of the respondents has supported the view of the learned Single Judge.

8. Evidently, as the record before the Court would indicate, a special appeal against the judgment of the learned Single Judge dated 8 November 2013 came up before the Division Bench. The Court was of the view in its order dated 22 April 2014 that the issue which had been raised by the State on the basis of the decision dated 19 October 2013 would affect thousands of police personnel across the State in the rank of Constables and Head Constables. Unfortunately, the decision of the State dated 19 October 2013 had not been placed before the learned Single Judge though it had been formulated and notified much before the judgment dated 8 November 2013. It was in this background that the Division Bench remanded the proceedings back to the learned Single Judge while allowing the special appeal of the State in part and directed the State to file an affidavit together with the order dated 19 October 2013 and other Government Orders which may concern the issue. Until then, the judgment of the learned Single Judge was stayed. In this background, we are of the view that it would have been appropriate and proper for the learned Single Judge to entertain the application which was filed by the State on merits. The original order of the learned Single Judge allows the petition in its entirety and in fact directs the State to provide HRA to all police officials, including the writ petitioners who are made to stay in barracks and who are not allotted appropriate residential house commensurate with the status, rank and entitlement. While allowing the writ petition, the judgment of the learned Single Judge appears to have also granted relief on arrears which were claimed in the writ proceedings.

9. In our view, there is merit in the submission which has been urged by the learned Chief Standing Counsel that the issue which has been raised by the State merits close consideration by the learned Single Judge. It would not be appropriate for the Court to enquire into the correctness of the judgment and order of a coordinate Bench dated 22 April 2014, which had allowed the earlier appeal filed by the State to the extent indicated in the judgment. The learned Single Judge was bound by those directions and ought to have entertained the applications filed by the State on merits. In this view of the matter, we allow the special appeal and set aside the judgment and order of the learned Single Judge dated 15 September 2014 passed in Review Application No. 243656 of 2014. We clarify that though we are not setting aside the judgment dated 8 November 2013 in the present special appeal, that should not be construed as an affirmation of the merits of the decision since by the previous order of the Division Bench dated 22 April 2014, the learned Single Judge would be required to consider the application filed by the State in regard to the legality of the judgment and order. Hence, we clarify that the correctness of the judgment is left open to be considered by the Learned Single Judge. However, in terms of the earlier order dated 22 April 2014 of the Division Bench, we continue the operation of the stay of the judgment dated 8 November 2013 till the matter is finally disposed of on merits by the learned Single judge.

The special appeal is allowed in the aforesaid terms. There shall be no order as to costs.