

(2010) 05 DEL CK 0037

In the Delhi High Court

Case No : Writ Petition (C) 5173 of 2003

The Municipal Corp. of Delhi

APPELLANT

Vs

The Workmen and Another

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0037

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : O.P. Saxena, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The question which falls for adjudication in this writ petition is whether an employee in unauthorized occupation of the premises of the employer is nevertheless entitled to HRA.

2. The eight concerned workmen represented through the respondent No. 1 Union were originally admitted to the Leprosy Home run by the petitioner MCD as patients afflicted with the disease of Leprosy and were as such residing in the accommodation meant for the patients. Upon being cured, they were employed by the petitioner MCD for carrying on various Class-IV duties in the same Leprosy Home as Sweeper, Ward Boy etc. It is the case of the petitioner MCD that the said workmen inspite of being cured and employed with petitioner MCD, did not vacate the portions of the Leprosy Home in which they were earlier allowed to reside as patients and continued to reside therein. The petitioner MCD in the circumstances, while paying salary to the said workmen did not pay HRA. It appears that two of the said workmen filed applications u/s 33C(1) and in which the HRA due to them was computed and directed to be paid. However, to avoid filing of such successive applications u/s 33C(1), the eight workmen through their Union raised a dispute and on which the following reference was made on 13th February, 1996 to the Industrial Tribunal:

Whether deduction of HRA by the management from the salary of S/Shri Ram Dhari, Jhandul Singh, Shumani Singh, Ram Bahadur, Mohd. Istiaque, Umed Singh, Nand Lal, Rajender from the date of their regularization is illegal and unjustified and if so, to what relief are they entitled and what directions are necessary in this regard?

3. The workmen before the Industrial Tribunal, while not disputing that they were initially admitted as patients in the Leprosy Home and were living in the accommodation meant for the patients, contended that they had since made Juggis/Jhopadis immediately outside the Leprosy Home and controverted that they were continuing to reside in the Leprosy Home. They further contended that they were never offered official accommodation and hence were entitled to HRA. Conversely, the petitioner MCD contended before the Industrial Tribunal that it was being forced to take steps for eviction of the workmen from the portions of Leprosy Home in their unauthorized occupation.

4. The Industrial Tribunal, in the award dated 13th July, 2001 has not returned any finding on whether the workmen were residing within the Leprosy Home or not. The Industrial Tribunal proceeded on the premises that even if the workmen were living within the Leprosy Home unauthorisedly, the petitioner MCD having neither offered nor allotted the accommodation to them, was liable to pay HRA. Accordingly, a direction was given to the petitioner MCD to pay not only arrears of HRA from the date of employment of the workmen but also to continue to pay HRA as per Rules.

5. The writ petition was filed after considerable delay. This Court required the petitioner MCD to file an additional affidavit explaining delay. The same was filed and on perusal thereof, notice of the writ petition was issued. The petitioner MCD along with writ petition had also filed an application for stay of operation of the award under challenge. However this Court, while issuing notice of the writ petition on 19th November, 2003 dismissed the application for interim relief observing that since the position of the workmen was of Leprosy patients, this is not a fit case where interim relief is to be granted. Subsequently, on 2nd August, 2004 it was informed that the award had been implemented. However, the contention of the counsel for the petitioner MCD was that since the award was also for payment of HRA in future, the question will still have to be adjudicated. The respondent workmen though in pursuance of the notice appeared through Advocate on 7th May, 2008 and 22nd October, 2008, neither filed any counter affidavit nor appeared thereafter. They were proceeded against ex parte on 11th December, 2009.

6. It is the admitted position that the Fundamental Rules & Supplementary Rules applicable to Government Servants apply to the payment of HRA to the employees of the MCD. Under the said Rules, HRA is not payable during the stay in Inspection Quarters of their posting or if the Government Servant shares Government accommodation allotted rent-free to another Government Servant or if the Government Servant resides in accommodation allotted to his/her parents/

son/daughter by the Central Government, State Government etc. or if the spouse has been allotted accommodation at the same station. However Clause 4(b)(vii) of the said Rules is as under:

(vii) Displaced Government servants who have not been allotted residential accommodation by Government but who are in unauthorized occupation of such accommodation and are paying damages to Government, shall be deemed to have been provided with Government accommodation and as such shall not be eligible for House Rent Allowance. Such persons cannot also be considered as "sharing Government accommodation" for the purpose of Paragraph 5 (e) below.

7. No direct precedent has been found. The Supreme Court in *Director, Central Plantation Crops Research Institute v. M. Purushothaman* 1994 Supp. (3) SCC 282 has held that the Government spends public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees; the investment made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. In that case the employees, though entitled to official quarters, had declined to occupy the same for one reason or the other; in these circumstances, they were not paid the HRA; the Central Administrative Tribunal held the employees to be entitled to HRA for the reason that only those employees who had applied for official accommodation and refused to occupy the same are liable to forfeit the benefit of HRA and not others and for the reason that HRA is a part of wages and no deduction from wages can be made merely on account of refusal to accept the accommodation. The Supreme Court set aside the order of the Central Administrative Tribunal and further held that HRA is not a matter of right; it is in lieu of the accommodation not made available to the employees. It was held that whenever accommodation is offered to the employees, the employees have either to accept it or to forfeit the HRA and the management cannot be saddled with double liability viz. to construct & maintain the quarters as well as to pay the HRA. It was further held that HRA is not a part of pay but is a compensatory allowance in lieu of accommodation. It was held that a compensatory allowance is not to be used as a source of profit and for this reason, the moment the amenity is provided or offered, the employees should cease to be in receipt of the compensation which is given for want of it.

8. Seen in the aforesaid light, the order of the Tribunal in the present case cannot be sustained. If the workmen inspite of unauthorisedly occupying the accommodation of the petitioner MCD are also held entitled to HRA, it would tantamount to allowing the workmen to profiteer from the same and which is not permissible. If the workmen are occupying the accommodation of the petitioner MCD, they are not required to be compensated in any way for the accommodation of employment having not been offered to them. Moreover, the Rule aforesaid also makes the Government servants in unauthorized occupation of Government accommodation ineligible for HRA.

9. However, while holding so, it is clarified that merely because the workmen are

held to be not entitled to HRA, will not come in the way of the petitioner MCD proceeding under The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or otherwise from evicting the workmen from the said premises and/or from recovering penal rent and/or damages for use and accommodation if determined in excess of the HRA, from the said workmen. It is further clarified that if there is any dispute as to whether the respondent workmen are in occupation of the premises of the petitioner MCD or not, the said dispute to be adjudicated before the appropriate Forum but till the said adjudication the respondent workmen cannot be entitled to HRA.

10. The writ petition therefore succeeds. The award dated 13th July, 2001 is set aside/quashed. The respondent workmen so long as they unauthorisedly occupy the accommodation of the petitioner MCD are held to be not entitled to any HRA. However, the respondent workmen having not contested the petition, no order as to costs.