

(2006) 04 MAD CK 0082

In the Madras High Court

Case No : Writ Petition No's. 36183, 38937 to 38941, 39594 to 39599 and 40021 of 2005 and 9280 and 62 of 2006 and W.P.M.P. No's. 39028, 41711 to 41715, 42441 to 42446 and 42917 of 2005 and 10269 and 56 of 2006

The Principal, Kendriya Vidyala Sangathan

APPELLANT

Vs

D. Sarala and The Registrar, Central Administrative Tribunal

RESPONDENT

Date of Decision : 21-04-2006

Acts Referred:

Constitution of India, 1950 — Article 141
Kendriya Vidyala Sangathan (Allotment of Residence) Rules, 1998 — Rule 10, 11, 3(9), 4, 4(1)

Citation : (2006) 04 MAD CK 0082

Hon'ble Judges : R. Sudhakar, J; P.K. Misra, J

Bench : Division Bench

Advocate : M. Vaidyanathan, for the Appellant; V. Girish Kumar, for R-1, R-2 Tribunal, for the Respondent

Final Decision : Allowed

Judgement

R. Sudhakar. J.

1. Even though the matters are listed for hearing miscellaneous petitions, on consent of the learned Counsel appearing for both sides, the writ

petitions themselves are heard on merits.

2. The present batch of writ petitions have been filed by Kendriya Vidyalaya Sangathan (in short, "KVS").

3. The petitioner-KVS is an autonomous body registered under the Societies Registration Act and financed by the Government of India through

Ministry of Human Resource Development. The staff of Kendriya Vidyalaya are governed by the Rules framed by the Board of Governors in

terms of the policies laid down by the Government of India, in 1986, sanction was accorded for construction of staff quarters for teaching staff of

Kendriya Vidyalaya, Meenambakkam in Tamil Nadu within the premises of the Vidyalaya. The construction of the building was completed in

September 1992 at a cost of No. 33.65 lakhs. In all, 21 quarters were constructed and classified as Type-I (A), Type-II (B), Type-III (C) and

Type-IV(D). In terms of Rule 8 of the KVS (Allotment of Residence) Rules, 1998 (hereinafter referred to as "the Rules"), the above said quarters

are allotted to the teachers as per the emoluments received by them. It appears that in January, 1995, due to acute water shortage, all the quarters

were vacated by the occupants and thereby heavy monetary loss was caused to the KVS and pursuant to audit objection, the KVS (Allotment of

Residence) Rules, 1998 came into force. All the staff were briefed about the audit objection and the willingness of the staff was called for to accept

the allotment. Since none of the staff members, the contesting respondents in all these writ petitions offered to take up the staff quarters, several

circulars were issued to the staff members, in particular, a circular dated 19.1.2004 was issued to the staff to apply for accommodation of Type-B

quarters. Subsequently, a priority list dated 1.1.2004 for allotment - category wise for Type "B" and Type "C" quarters, was circulated on

20.2.2004. The above circulars were issued under the Rules. In spite of such circular, since no staff member came forward to occupy the premises,

the petitioner-KVS was left with no other option except to allot the quarters as per the priority list. However, in view of the refusal of the staff to

occupy the quarters allotted to the contesting respondents, the House Rent Allowance (in short, "HRA") for the period from the date of allotment

to the date when the last unit was occupied, was disallowed. This was done based on Rule 11 of the Rules. The allotment of the quarters was done

in terms of Rule 10 of the Rules by the Allotment Committee. There was no compulsion by the KVS authorities whatsoever. Since the staff

members did not co-operate with the KVS, the KVS had to invoke Rule 8 read with Rule 6 and Rule 3(9) of the Rules for allotment of quarters.

This was done by the Executive Committee which is a sub-committee of the Vjdyalaya Management Committee. The contesting respondents,

namely the staff members, aggrieved by the deduction of HRA, filed Original Applications before the Central Administrative Tribunal.

4. The claim of the staff members is that they individually own houses and reside within 20 kms. from the school, They are not eligible to get

accommodation by allotment of quarters as they have their own house. The KVS without following the Rules, had allotted the quarters to the staff

members and they have objected to the allotment on the ground that they are not entitled to such allotment under the Rules and therefore,

requested for cancellation of the allotment of quarters. It was contended by them that the disallowance of HRA from the date of allotment of

quarters was contrary to the Rules and the deduction of HRA from their pay based on the priority list by common circular dated 28.6.2004, was

erroneous. It is contended by the staff members that the allotment should be made strictly in accordance with the Rules and the KVS authorities

cannot suo motu allot the quarters and compel the staff members to occupy the same. It is also contended by the staff members that in terms of

Rule 10 of the Rules, the Committee should have short-listed the staff members who are ineligible to get accommodation as per Rule 4(1) of the

Rules. It was also contended by the staff members that in the case of one V.K. Manoharan, who was occupying the quarters from 1993 to 1996,

was forcibly evicted by the KVS authorities under Rule 4(3) of the Rules on the ground that he purchased his own house. On the same analogy,

the subsequent allotment made is contrary to the rules and therefore unsustainable.

5. Relying upon the various provisions of the Rules, the Tribunal observed as follows:

26. Here I have to see whether the action of the respondents for denying HRA is proper. Admittedly, as per rules, the applicants are not eligible

for allotment of quarters. When the applicants are not fulfilling the benefit of residing in quarters they are eligible for HRA. When the respondent

has forcibly allotted the quarters the applicants have refused the allotment. Immediately without hearing the applicants, the respondent has issued a

circular for recovery of the HRA paid to the applicants from the pay bill June, 2004 which is capricious and against law.

31. The said rules is applicable to the allottees made by the Allotment Committee after calling applications for allotment of quarters. The said rule is

not applicable to the present case since there was no procedure followed by the respondents for calling of applications. The applicants did not

submit their applications for allotment. Refusal of occupying the quarters only on the basis of the allotment made by the respondents suo motu,

hence the said Rule 11 is not applicable to the facts of this case.

32. I carefully considered the contentions from the either side and the respondent has not justified in denying HRA. The impugned order is not

sustainable in the eye of law since there was no notice prior to passing the orders. Since the rules for allotment are not followed while allotting the

quarters the denial of HRA is also not proper. I consider the orders passed by this Tribunal in OA.981 of 2000 and batch is applicable to the facts

of this case. Hence the impugned order is not sustainable in the eye of law.

33. For the foregoing reasons and the judgment referred above and as per provisions of allotment rules, KVS (Allotment of Residence) Rules,

1998, the impugned action of the respondents is illegal. I accepted the contention taken by the applicants and the respondents have not justified in

taking action for denial of HRA. While admitting the case the interim order of recovery was granted. The interim order is made absolute.

34. The OAs. are allowed. No order as to costs.

It is against this order of the Tribunal that the KVS has filed the present writ petitions.

6. Before we go into the merits of the claims made by either parties, it will be useful to refer to the following Rules of the KVS (Allotment of

Residence) Rules:

Rule 3. Definitions:

In these rules, unless the context otherwise requires-

(9) "Priority Date" of an officer in relation to a type of residence to which he is eligible under Rule 6 of these Rules, means the earliest date from

which he has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Kendriya Vidyalaya

Sangathan or the Central Govt. or State Govt. or on foreign service except for periods of leave.

Provided that where the priority date of two or more officers is the same, seniority among them shall be determined by the emoluments, the officer

in receipt of higher emoluments taking precedence over the officer in receipt of lower emoluments; where the emoluments are equal, by the length

of service; and where both the emoluments and length of service are equal, on the basis of the scale of pay of the officer, the officer working in a post having higher scale of pay taking precedence over the officer in receipt of lower scale of pay.

Rule 4: Ineligibility of Employees owning House(s).

(1) No employee of the Sangathan shall be eligible for allotment of residence if either he or any member of his family owns a house within 15 Kms.

(20 Kms. for Delhi, Calcutta, Bombay and Chennai) from place of his posting.

(2) Notwithstanding anything contained in Clause (1) of this rule, the Allotting Authority may allot or reallocate a residence to any employee if -

(a) The house owned by him, his wife, any dependent child or by his father/mother or any other dependent relation has been requisitioned by the

Government/Local authority; or

(b) It is proved to the satisfaction of the Allotting Authority that such house has been given out on lease:

(i) Before the posting of the employee to the Vidyalaya, Regional Office(s) and Headquarters office of the Sangathan; and

(ii) The Allotting Authority is satisfied that it is not possible for the lessor, for reasons beyond his control, to obtain vacant possession of the house;

Provided that if at any time it appears to the Allotting Authority that no effort has been made to obtain vacant possession of the house, it shall be

open to the Allotting Authority to cancel the allotment and require the allottee to vacate the residence forthwith and to recover the damages at the

rates prescribed by Government of India or the Sangathan as damages from the date of such cancellation till the residence is vacated.

(3) When after a residence has been allotted to an employee, he or any member of his family becomes owner of a house within the limits

mentioned in Clause (1) of this rule, such employee shall notify the fact to the allotting authority and shall vacate the residence allotted to him by the

Sangathan under these rules within a period of one month from the date the house is provided with electricity connection.

(4) The provisions of this rule will not apply where sufficient number of residences are available for allotment to all the applicant.

Rule 7: Application for allotment;

(1) Applications for allotment shall be invited by the Allotting Authority in such

form and manner and before such date as may be specified by him.

(2) An employee joining duty on transfer or on first appointment may submit his application to the allotting authority within a month of his joining duty.

(3) Application received under Clause (2) above on or before the 20th day of a calendar month shall alone be considered for allotment in the succeeding month.

Rule 8: Basis of allotment:

(1) Save as otherwise provided in these Rules, a residence falling vacant will be allotted preferably to an applicant desiring a change of accommodation in that type, and if not required for that purpose, to an applicant without accommodation in that type having the earliest priority date for that type of residence.

(2) Allotment of the residences earmarked for a specific employee or classes of employees shall be made only to that specific employee of those classes of employees in whose favour the residence has been earmarked.

(3) Employees joining the Sangathan on deputation may be allotted residence of the eligible category or one category below on priority.

(4) Separate seniority list will be prepared showing the order in which the allotment is to be made, for each type of residence.

Rule 9: Earmarking of residence:

Notwithstanding anything contained in these rules, any accommodation may be earmarked for allotment to such officer or officers of the Sangathan as may be specified by the Commissioner.

Rule 10: Allotment Committee;

(1) All applications for allotment shall be considered by the Allotment Committee constituted separately for each Kendriya Vidyalaya, Regional

Office, the Headquarters office or any other establishment of the Sangathan consisting of such members as may be prescribed by the KVS Hqrs

(2) The Committee shall draw up a list of applicants eligible for allotment in the order in which residence may be allotted during the allotment year.

The list shall remain valid for one year. A fresh list will be prepared and approved by the Allotment Committee at the beginning of each allotment year.

Note:- The Allotment Committee may allot an appropriate place in the list of the employees joining during the middle of the year and apply for

residence as mentioned in Rule 7.

(3) A residence falling vacant will be allotted by the allotting authority strictly in accordance with these rules after taking into account the list

prepared by the allotment committee under Clause (2) of this rule. In the event of difference of opinion between the allotting authority and allotment

committee, the matter will be referred to the authority immediately higher than the allotting authority whose decision in the matter shall be final.

(4) A letter of allotment shall be issued in duplicate to every employee to whom a residence is allotted and he shall be required to convey his

acceptance or otherwise in writing (on one copy of the letter) of the terms of the allotment stipulated therein before actual possession of the

residence is made over to him.

(5) If an employee to whom a residence is allotted does not accept the allotment or take possession of the residence within a period not exceeding

8 continuous days, from the date of receipt of the letter of allotment, the allotment will be treated as cancelled and he/she shall not be eligible for

another allotment for a period of one year from the date of the allotment letter.

Rule 11: Non-acceptance of Allotment or offer or failure to occupy the allotted residence after acceptance:

If any employee fails to accept the allotment of a residence within five days or fails to take possession of that residence after acceptance within

eight days from the date of the receipt of the letter of the allotment, he/she shall not be eligible for another allotment letter. Such an employee will

also not be eligible to the drawal of HRA for the period during which the allotted residence remains vacant or surplus.

7. The main contention of the petitioners/KVS in their challenge against the order of the Tribunal is that Rule 4(1) of the Rules will not be

applicable in the present case. On the contrary, allotment of quarters was as per Rule 4(4) of the Rules. Further, the petitioners had prepared a

priority list for allotment of quarters and the staff members were allotted only as per the priority list. Since the staff members refused to accept the

quarters, they were rightly disentitled to HRA, which is not part of the pay and it cannot be claimed as a matter of right. When the quarters are

allotted to the staff members by the petitioners, they cannot refuse to take such allotment and also claim the HRA. The conduct of the staff

members in refusing to occupy the quarters and claim HRA, will amount to imposing unwanted liability on the petitioners. Further, the Tribunal has

failed to take into consideration the ratio of the judgment reported in AIR 1994 SC 2541 (Director, C.P. Crops Research Institute v. M.

Purushothaman), which would apply squarely to the present case and the reliance of the earlier order of the Tribunal in O.A.No. 981 of 2000 and

batch, dated 20.7.2001, was totally misconceived and it will not apply to the facts of the present case.

8. learned Counsel for the KVS would earnestly submit that the Tribunal has overlooked the decision of the Supreme Court reported in AIR 1994

SC 2541 cited above. It was submitted that the contentions made by the present contesting respondents, namely the staff members, were

considered by the Apex Court and negatived in similar circumstances. In such view of the matter, it was submitted that there is no scope for any

further adjudication on the claim of the contesting respondents with regard to their claim for HRA.

9. In the above circumstances, it will be useful to refer to the observations of the judgment of the Apex Court in the said decision reported in AIR

1994 SC 2541. The Tribunal in that case held that the employees cannot be compelled to occupy official quarters and hence on their refusal to

occupy the same, they cannot be denied the benefit of HRA. The Tribunal gave two reasons and the first reason was that under the relevant

provisions, it is only those employees who had applied for official accommodation and who refused to occupy the same, are liable to forfeit the

benefit of HRA and not others. The second reason given by the Tribunal in that case was that the HRA is a part of wages and no deduction from

the wages can be made merely on account of the refusal to accept the accommodation. Paragraphs 5 to 10 of the judgment of the Supreme Court

in that case AIR 1994 SC 2541 read as follows:

5. It is clear from the aforesaid provisions that paragraphs 4(a)(i) and (ii) lay down the procedure for making application for accommodation.

Paragraph 4(b)(i) lays down the consequences on refusal to accept the accommodation when offered. There is no doubt that paragraphs 4(a)(i)

and (ii) state that an application has to be made to secure accommodation. However, that does not mean that Government or the organisation such as the appellant-organisation to which the said provisions apply cannot on their own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and he refuses to accept the same when offered that he would be disentitled to the HRA, is not correct. It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or forfeit the HRA. The management cannot be saddled with double liability, viz, to construct and maintain the quarters as well as to pay the HRA. This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum.

6. It is for this reason again that paragraph 4(b)(i) provides that the HRA shall not be admissible to those who occupy accommodation provided for them as well as to those to whom accommodation has been offered but who have refused to accept it. The provisions of paragraph 4(b)(i) are independent of the provisions of paragraph 4(3)(i) and (ii). Whereas paragraph 4(a)(i) and (ii) speak of procedure to be followed by the employees who are in need of accommodation, paragraph 4(v)(i) provides for the forfeiture of the HRA even when the accommodation has been offered on its own by the management whether the application for the same has been made or not. There is no distinction made in this provision between those who have applied and those who have not applied for accommodation. Even otherwise, we are of the view that the distinction sought to be made by the Tribunal is on the face of it, irrational, particularly taking into consideration the resources spent on constructing the quarters.

7. We are also afraid that the Tribunal is not right in including the HRA in the

definition of wages. The Fundamental Rule 9(21)(a) which is applicable to the respondents-employees defines "pay" as follows

9(21)(a) Pay means the amount drawn monthly by a Government servant as-

(i) the pay, other than special pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or

in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and

(ii) overseas pay, special pay and personal pay; and

(iii) any other emoluments which may be specially classed as pay by the President.

8. It is obvious from this definition that HRA is not part of "pay". Further, Fundamental Rule 44 defines "Compensatory Allowance" as follows:

F.R. 44. Compensatory allowance - Subject to the general rule that the amount of compensatory allowance should be so regulated that the

allowance is not on the whole a source of profit to the recipient, the Central Government may grant such allowances to any Government servant

under its control and may make rules prescribing their amounts and the conditions under which they may be drawn.

9. The HRA would be covered by the definition of Compensatory Allowance. It is compensation in lieu of accommodations. This definition itself

further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which

are not available or provided to the employee. The moment, therefore, the amenities are provided or offered, the employee should cease to be in

receipt of the compensation which is given for want of it. We wish the Tribunal had perused the definition of "pay" and "compensatory allowance

given in the Fundamental Rules before pronouncing that the HRA is a part of the wages or pay and, therefore, cannot be disturbed.

10. For both these reasons, therefore, we are unable to accept the conclusion of the Tribunal.

11. Shri Ranjit Kumar, learned Counsel appearing for the appellant-organisation pointed out a letter dated 13-8-1986 addressed by the Under

Secretary of the Indian Council of Agricultural Research to the appellant wherein it is stated that the matter was examined and it was held that the

HRA should be denied to the employee who refuses to take the allotment made

or when offered to him till such time the quarter in question lies

vacant for want of any other taker. This would mean that the HRA would be denied to the employee only for the period the quarter lies vacant

consequent upon his refusal. While, therefore, setting aside the impugned order and allowing the appeal, we direct the appellant-organisation to

deduct the HRA from the salary of the respondent-employees only for the period the quarters which were offered to the employees remained

vacant. The appeal is allowed accordingly with no order as to costs.

10. In the present case also it is not the case of the staff members opting for allotment. On the contrary, sufficient quarters are available for

allotment and the petitioners-KVS allotted the quarters as per the priority list. For reasons best known to each one of the staff members, they

refused to take the accommodation and therefore, it has to be accepted that they have refused to take the offer and consequently, they will be

disentitled to the HRA. The Apex Court in no uncertain terms has held that whenever the accommodation is offered to employees, they have to

accept or forfeit the HRA. Therefore, in the light of the very clear pronouncement of the Apex Court, we have no hesitation to accept the stand of

the petitioners-KVS.

11. The Tribunal in the present case, while extracting the relevant portion of the judgment of the Apex Court, has steered clear of the observations

of the Apex Court on a specious plea of discrimination. The Tribunal has proceeded to grant the relief to the staff members on the ground that in

O.A.No. 981 of 2000, dated 20.7.2000, the Tribunal has granted the relief in spite of the judgment of the Apex Court, which squarely covers the

issue in the present case. We are not concerned with the decision of the Tribunal in O.A. No. 981 of 2000 and it cannot be the basis for rendering

a decision contrary to the law laid down by the Apex Court which is binding on all concerned under Articles 141 of the Constitution of India.

12. The Tribunal in the present case has also come to the conclusion that since the allottees have not requested for any allotment, Rule 11 of the

Rules will not be applicable and HRA cannot be denied. Since the allotment was made suo motu, Rule 11 of the Rules was held to be not

applicable to the present case. As has been very clearly held by the Apex Court, the power to allot quarters is very much available with the

authorities and that is so even under the Rules. Hence, the allotment made as per priority list is in order and consequently on refusal to accept the allotment, the respondents teachers will be disentitled to the HRA. The judgment of the Apex Court clearly fortifies such a view.

13. The contesting respondents cannot as a matter of right claim that the HRA should be paid and the HRA recovered should be refunded. The order of the Tribunal suffers from error apparent on the face of the record and misreading of Rule 4(4) of the Rules and contrary to the judgment of the Apex Court cited above.

14. In such view of the matter, we have no hesitation to set aside the order of the Tribunal. Accordingly, the order of the Tribunal is set aside. The writ petitions are allowed. The petitioners-KVS will be entitled to make allotment in accordance with the Rules and as per the priority list. No costs. W.P.M.Ps. are closed.