
(2015) 09 AHC CK 0144

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19106 of 2004

Uma Shanker Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 8 ADJ 741 : AIR 2015 All 218 : (2015) 6 AWC 5889 : (2015) 4 ESC 2368 : (2016) 1 SCT 353 : (2015) 4 UPLBEC 2665

Hon'ble Judges : D.Y. Chandrachud, C.J., Pradeep Kumar Singh Baghel and Yashwant Varma, JJ.

Bench : Full Bench

Advocate : V.K. Singh, A.K. Sharma, G.K. Singh, R.K. Singh Kaosik, R.P.S. Chauhan, Y.P. Singh and A.K. Singh, for the Appellant; Shashank Shekhar Singh and C.S.C., for the Respondent

Final Decision : Disposed Off

Judgement

Dr. D.Y. Chandrachud, C.J.

1. This reference before the Pull Bench has been occasioned by a referring order of a learned Single Judge dated 19 November 2010. The issues which have been referred to the Full Bench for resolution have been formulated thus:

"(a) Whether the Government Order dated 10.12.2002 which provides for computation of distance of the institution concerned for the purpose of payment of house rent allowance from the original Nagarpalika, in the facts of the case Mirzapur, is binding between the parties;

(b) Whether the Government Order dated 10.12.2002 is in violation of Article 14 and 16 of the Constitution of India;

(c) Whether the judgment of the Division Bench holding that it is irrelevant from which Municipal Board the distance of the institution is less than 8 kilometers, lays down the correct position in law or not."

In order to appreciate the issues which have been raised, a brief reference to the factual background would be necessary. There is an educational institution by the name of Rashtriya Inter College, Sherpur, Mirzapur which is governed by the provisions of the Uttar Pradesh Intermediate Education Act, 1921. The institution receives grant-in-aid from the State Government. All the petitioners are employees of the institution - the first petitioner is the Principal, the second to sixth petitioners are Lecturers, the seventh to seventeenth petitioners are Assistant Teachers, the eighteenth and nineteenth petitioners are functioning as Head Clerk and Assistant Clerk and the remaining petitioners are class IV employees. Village Sherpur in which the institution is situated falls within the geographical limits of the district of Mirzapur. The case of the petitioners is that the village is within a radius of eight kilometers from the municipal limits of the city of Varanasi. They have placed reliance on a certificate issued by the Collector, Mirzapur on 17 August 1982, a certificate dated 7 January 1981 issued by the Nagar Adhikari, Nagar Mahapalika, Varanasi and by the Varanasi Development Authority (VDA) on 4 December 1986. The dispute which is sought to be raised in the writ proceedings is in regard to the payment of House Rent Allowance (HRA) to employees of the institution.

2. A Government Order was issued on 15 December 1981 by which it was provided that Government employees whose place of work is situated within municipal limits or though situated outside municipal limits is within a distance of eight kilometers would be entitled to the payment of HRA. The municipal areas and slabs for the payment of HRA were indicated in Annexure-1 to the Government Order. Subsequently, another Government Order was issued on 22 June 1982. We will separately examine the effect of the subsequent Government orders including those dated 22 June 1982, 29 October 1984, 11 June 1999, 25 February 2000, 21 May 2002 and 10 December 2002.

3. At this stage, it would suffice to note that the petitioners were receiving HRA at the rate payable to teachers and employees working in Varanasi city on the basis that their place of work was situated within eight kilometers from the limits of the municipal area of Varanasi. The Accounts Officer in the office of the District Inspector of Schools (DIOS), Mirzapur raised an objection on 21 November 1982. It appears that the matter was clarified and the employees continued to draw their HRA at the rate payable to the employees of Varanasi city. It appears that the salary of the teachers and employees of the institution was revised in 1991 with effect from 1 January 1986 and, accordingly, HRA was also revised under a Government Order dated 24 July 1992. A further revision took place with effect from 1 January 1996. The HRA was also revised by a Government Order dated 11 June 1999 with effect from 1 June 1999.

4. The grievance of the petitioners was that though by the Government Order, they were entitled to receive HRA at the revised rate and at the rate which was payable to employees of Varanasi city, that was not paid. This led to the filing of a writ petition (Writ Petition No. 29617 of 2000) which was disposed of on 21

July 2000 permitting the petitioners to make a representation to the Principal Secretary (Finance). On 21 May 2002, the Principal Secretary (Finance) held that the petitioners were entitled to receive HRA at the rate which was applicable to employees of Varanasi city after due certification that the village in which the institution was situated was within a radius of eight kilometers from the municipal limits. Consequently, the DIOS issued an order dated 14 August 2002 sanctioning HRA at the aforesaid rate.

5. On 10 December 2002, another Government Order was issued in respect of the teachers and employees of Om Prakash Jwala Devi Higher Secondary School, Shuklaganj. By a Government Order dated 22 June 1982, the employees of the institution had been held to be entitled to receive HRA at the rate payable to employees of Kanpur since the institution was situated within a radius of eight kilometers of Nagar Mahapalika, Kanpur. Shuklaganj is situated in the district of Unnao but since the institution was situated within a radius of eight kilometers of the municipal limits of the Nagar Mahapalika of Kanpur, the State Government had issued the said direction. On 10 December 2002, however, the State Government issued a Government Order following the creation of the Nagar Palika Gangaghat, Unnao in 1999 revoking its earlier order.

6. The DIOS, Mirzapur passed an order on 17 April 2004 by which he cancelled the earlier order dated 14 August 2002 passed in favour of the petitioners, based on the Government Order dated 10 December 2002 which had been issued in the case of Om Prakash Jwala Devi Higher Secondary School. As a result, the petitioners were directed to receive HRA at the rate payable to employees working in institutions in district Mirzapur. This has given rise to the filing of writ petition.

7. On 20 November 2003, a learned Single Judge of this Court delivered a judgment in Rajwanta Singh and others v. DIOS, Mirzapur (Writ Petition No. 12523 of 1987). The learned Single Judge relied upon (i) the decision dated 21 May 2002 in the case of the institution of the petitioners (Rashtriya Inter College, Sherpur, district Mirzapur) holding that since the institution was situated within eight kilometers of the limits of the Nagar Nigam, Varanasi, HRA should be paid to the teachers of the college; (ii) the decision dated 22 June 1982 in respect of Om Prakash Jwala Devi Higher Secondary School, Shuklaganj, district Unnao wherein HRA was directed to be paid by the State Government since the institution was within eight kilometers of the limits of Kanpur Nagar Mahapalika.

8. In Rajwanta Singh's case the Inter College though situated in district Mirzapur was located within eight kilometers of the border of Nagar Nigam, Varanasi. In the counter-affidavit which was filed by the State in that case, it was asserted that the institution was situated in the district of Mirzapur and HRA would be payable only if the institution is within eight kilometers of the border of Mirzapur Municipality. The learned Single Judge held that this view in the counter-affidavit was contrary to the decision of the State Government in the two cases referred to above. Explaining the rationale for the prescription that the institution should

be situated within the territory of the Nagar Palika or not beyond eight kilometers from the municipal limits, the learned Single Judge held as follows:

"Further the prescription of location within the territory of Nagar Palika or 8 kms. outside those limits appears to have been made because in those areas on account of shortage of accommodation, the rent of houses is likely to be high. Outside those limits there is not much pressure of population and therefore, houses are expected to be available on lower rent.

On that logic whether the institution is located within 8 kms. of the municipality of that district or within the same distance of the municipality of any other district would make no difference as the rent in both such cases is likely to be high and, therefore, on that logic also the house rent would be payable in both the cases.

Because it is not denied in the counter-affidavit specifically that the petitioner's institution is not located within 8 kms. of the Nagar Nigam, Varanasi therefore, the writ petition is allowed and it is held that House Rent would be payable to teachers of that institution."

9. The writ petition was, accordingly, allowed. An appeal was carried before the Division Bench by the DIOS, Mirzapur from the judgment of the learned Single Judge in DIOS, Mirzapur and others v. Rajwanta Singh and others, Special Appeal (Defective) No. 1051 of 2007. While dismissing the special appeal, the Division Bench observed as follows:

"4. The institution is within eight kms. from the Municipality (Nagar Nigam) of Varanasi. The intention in granting the House Rent Allowance is to overcome the difficulty of the persons who are staying in the near vicinity of a Municipal Body. This is because the cost of accommodation in such area is generally high. It is immaterial whether the institution is within the same district or not. That is the view taken by the learned Single Judge. The view is absolutely correct."

10. A Special Leave Petition against the judgment of the Division was dismissed by the Supreme Court on 21 April 2008 in Director of Education U.P. and others v. Rajwanta Singh and others, Special Leave Petition No. 5539 of 2008.

11. When the present proceedings came up before the learned Single Judge, the judgment of the Division Bench dated 22 November 2007 affirming the earlier judgment of the learned Single Judge dated 20 November 2002 was placed before the Court. In the view of the learned Single Judge, the Government Order dated 10 December 2002 (in the case of Om Prakash Jwala Devi Higher Secondary School, Shuklaganj) had altered the mode and manner of determination of the distance for purposes of payment of HRA. The learned Single Judge while referring the issue before a larger Bench observed as follows:

"In my opinion, the Government Order dated 10.12.2002 has altered the mode and manner of determination of the distance for the purposes of payment of house rent allowance. Such Government Order has not been challenged, nor it

has been quashed by the Division Bench. So long as the Government Order stands a direction to compute the distance for the purposes of payment of house rent allowance for teachers and employees of aided institution has to be made from Mool Nagarpalika which in the facts of the case would be Municipal Board, Mirzapur. Preference to the Municipal limits of Varanasi is wholly out of context. It may be clarified that the right to get house rent allowance is derived from the G.O. only and therefore if the State Government in its wisdom has laid down the conditions for grant of such house rent allowance and determination of distance of the institution for the purposes, the same would be binding upon the parties.

Subject however to the condition that the conditions so imposed may be granted by the High Court. However any order by this Court may come in conflict with the Division Bench judgment of this Court in Special Appeal No. 1051 of 2007. It is therefore desirable that the falling questions of law may be examined by a larger Bench of this Court."

12. With this background, we proceed to consider the issues referred to the Full Bench.

13. The entire field is governed by Government Orders on the subject. On 15 December 1981, a Government Order was issued in the context of the recommendations which were made by the Second Pay Commission laying down the conditions for the payment of HRA. The relevant part of the Government Order reads as follows:

Again para 4 of the Government Order clarifies the position as follows:

14. This Government Order makes it clear that for determining the admissibility of HRA, what is relevant is the place of work of the employee. Annexure-1 to the Government Order is a list of municipal areas with reference to which HRA is admissible. The Government Order lays down that an employee whose place of work is situated within a municipal area specified in Annexure-1 or though outside municipal limits is within a distance of eight kilometers would be entitled to the payment of HRA. This is clarified in Para-4 of the Government Order which has been extracted above.

15. Subsequently, on 22 June 1982, a Government Order was issued in the case of Om Prakash Jwala Devi Higher Secondary School, Shuklaganj which was situated in the district of Unnao. The Government Order stated that HRA would be admissible since the institution was situated within a distance of eight kilometers from the limits of Kanpur Nagar Mahapalika. On 29 October 1984, another Government Order was issued by which it was clarified that admissibility of HRA would be based on the place of work of the employee, in terms of the Government Order dated 15 December 1981 irrespective of where the place of residence is situated. The Government Order also dealt with the payment of HRA in the case of local bodies which are situated adjacent to notified Nagar Palikas in which case, it was stated that HRA would be admissible within the entire limits of the adjacent local body. However, it was clarified that in respect of institutions

situated outside the territorial limits governing the local body, it was the distance from the original Nagar Palika (ewy uxj ikfydk) that would be computed and not from the limits of the adjacent local body. A clarificatory Government Order was issued on 29 February 2000. In the meantime, on 11 June 1999, a Government Order came to be issued following the recommendations of the Pay Commission. Under paragraph 4 of the Government Order, it was clarified that in the case of aided institutions, technical institutions, local bodies, public corporations and Government corporations, it was left open to the institution concerned to take an appropriate decision having regard to its own financial condition and the date from which the modified rates should be applicable.

16. On 21 May 2002, following a judgment of this Court in Writ Petition No. 29617 of 2000 which related to the same educational institution to which the present reference relates, a Government Order was issued following the directions of this Court for the examination of the claim for the payment of HRA. The Government Order stated that the distance between the institution and the limits of Varanasi Nagar Nigam was less than eight kilometers and hence, HRA would be admissible on the basis of the rates prescribed for Varanasi city. This was however made subject to a due certification by the competent authority that Rashtriya Inter College, Sherpur is actually situated within a distance of eight kilometers from the limits of the municipal area.

17. A discordant note was struck on 10 December 2002 by the Government Order which was issued in the case of Om Prakash Jwala Devi Higher Secondary School, Shuklaganj. By the Government Order dated 10 December 2002, a decision was taken in the case of the aforesaid institution to the effect that since the institution was situated in the district of Unnao, the earlier Government Order of 22 June 1982 allowing HRA would stand revoked and the employees would not be entitled to HRA admissible in the case of Kanpur Nagar though the institution was situated within a distance of eight kilometers of municipal limits.

18. The principle that emerges from the Government Order dated 15 December 1981 is that the admissibility of HRA would be dependant on two factors. The first is the place of work and the second is the distance from a notified municipal area. If the place of work is either situated within the limits of the municipal area or though beyond the municipal limits is within a distance of eight kilometers from the municipal limits, HRA would be paid at the rate which would be admissible to the municipal area.

19. The rationale for the aforesaid decision is that HRA is intended to compensate an employee with reference to the cost of rental accommodation. The underlying principle is that the economic factors which have a bearing on rental values within a municipal area would also affect rental values up to a reasonable distance from the municipal limits. That reasonable distance is pegged at eight kilometers. Hence, though the place of work may be situated outside a municipal area, so long as it falls within a distance of eight kilometers from the municipal limits, the same HRA would be paid. In the present case, for

instance, the institution is stated to be situated within a distance of eight kilometers from the municipal limits of Varanasi which is now a municipal corporation. The institution is however situated within the geographical limits of the district Mirzapur. Mirzapur is a municipality. The economic factors which affect rental values would be dependent on the geographical proximity of the institution which lies within a radius of eight kilometers of Varanasi as distinct from the geographical location of the institution in the district of Mirzapur. This logic which underlies the Government Order dated 15 December 1981 was in fact noticed in the judgment of the learned Single Judge dated 20 November 2003 in Rajwanta Singh's case (supra). The learned Single Judge, in our view, correctly observed that on account of a shortage of accommodation the rent of houses within a municipal area or within eight kilometers of municipal limits is likely to be high but outside those limits, the same pressure of population may not necessarily exist. In the judgment of the Division Bench dated 22 November 2007, it was observed that the intention of granting HRA is to overcome the difficulty of persons who are staying in the near vicinity of a municipal body. This is because the cost of accommodation in such areas is generally high. Hence, the Division Bench observed that it is immaterial whether the institution is within the same district or otherwise. We are in respectful agreement with the judgment of the Division Bench dated 22 November 2007 in the case of DIOS, Mirzapur v. Rajwanta Singh (supra). The decision of the Division Bench which affirms the view of the learned Single Judge was plainly in accordance with the terms of the Government Order dated 15 December 1981.

20. The subsequent Government Order dated 29 October 1984 did not make any alteration to the principle and in fact, clarified that what was relevant was the place of work irrespective of where the employee resides. The reference to the expression occurred in the Government Order dated 29 October 1984. The context of this reference was that there may be a local body which is adjacent to a notified Nagar Palika. The Government Order clarified that HRA would be admissible where the local body is adjacent to a notified municipal area. However, if the place of work is situated outside the limits of the local body, the distance would be computed with reference to the "Original Nagar Palika" and not from the adjacent local body. This was reiterated in a subsequent Government Order dated 25 February 2000.

21. In the case of Rashtriya Inter College, Sherpur, a Government Order was issued on 21 May 2002 following a direction of this Court for the examination of the matter where it was clarified that since the institution was within a distance of eight kilometers from the municipal limits of Varansi, HRA would be admissible. The Government Order was obviously a conscious decision since it referred to the fact that the institution was situated in the district of Mirzapur. Since the distance from the municipal limits of Varanasi was less than eight kilometers, HRA was held to be admissible on that basis.

22. The Government Order dated 10 December 2002 which has given rise to the

present reference to the Full Bench has, in fact, no bearing on the issue. The Government Order was in the context of one particular institution namely Om Prakash Jwala Devi Higher Secondary School, Shuklaganj. In that case, an earlier decision by which HRA had been held to be admissible at the rate prescribed for Kanpur Nagar was revoked on the ground that the institution was situated in the district of Unnao.

23. In the circumstances, we are of the view that there is no reason to doubt the correctness of the judgment of the Division Bench in the case of DIOS, Mirzapur v. Rajwanta Singh (supra), decided on 22 November 2007. The Division Bench, in fact, did construe the Government Order dated 10 December 2002 and the judgment was rendered after the Court had duly considered the Government Order. Hence, we see no reason to doubt the correctness of the interpretation which has been placed in the judgment of the Division Bench noted above. We, accordingly, answer the reference in the following terms:

Question (a)- The Government Order dated 10 December 2002 was in the context of the facts of a particular educational institution, namely, Om Prakash Jwala Devi Higher Secondary School, Shuklaganj and does not lay down a binding principle of interpretation in regard to the admissibility of HRA under the terms of the Government Order dated 15 December 1981 and consequential Government Orders which have been referred to in the earlier part of the present judgment.

Question (b)- The issue as to whether the Government Order dated 10 December 2002 is violative of Articles 14 and 16 will not arise in this reference.

Question (c)- The judgment of the Division Bench in DIOS, Mirzapur v. Sri Rajwanta. Singh (supra) dated 22 November 2007 is affirmed as laying down the correct principle of law. The relevant principle for the purposes of computing and determining the admissibility of HRA in terms of the relevant Government Order dated 15 December 1981 and the Government Orders which have been referred to in the present judgment, is the place of work. If the place of work falls within a notified municipal area or though beyond municipal limits is within a distance of eight kilometers of the municipal limits, HRA would be payable at the rate as applicable in respect of the municipal area. The district within which the institution is situated would not be material so long as the institution or place of work is within the municipal limits or within a distance of eight kilometers beyond the municipal limits.

24. We also clarify that the interpretation which we have placed is on the basis of Government Orders which form the subject-matter of these proceedings. Since the field falls within the purview of Government Orders, any subsequent modification of the position by the Government would be governed by the extant Government Orders. The reference is, accordingly, disposed of. The writ petition shall now be listed before the learned Single Judge for disposal in the light of the questions so answered.