

(2016) 03 AHC CK 0139

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 : 30-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 ADJ 7 : (2016) 3 AllWC 2870 : (2016) 116 ALR 584 : (2016) 150 FLR 610

Hon'ble Judges : Sudhir Agarwal;Shamsher Bahadur Singh, JJ.

Bench : Division Bench

Advocate : V.K. Singh, A.K. Sharma, G.K. Singh, R.K. Singh Kaosik, R.P.S. Chauhan and Y.P. Singh, Advocates, for the Appellant

Final Decision : Allowed

Judgement

1. As requested and agreed by learned counsel for the parties, we proceed to hear and decide this writ petition finally at this stage under the Rules of the Court.

2. Heard Sri A.K. Sharma, Advocate, for petitioners and learned Standing Counsel for respondents.

3. Petitioners, 25 in number, are working in educational institution, namely, Rashtriya Inter College, Sherpur, Mirzapur (hereinafter referred to as "College") which is recognised by Board of High Schools and Intermediate under the provisions of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921") and Rules and Regulations framed thereunder and are receiving salary under the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as "Act, 1971"). It is said that College is situate at a place which is beyond eight kilometers from Municipal Board limits of Mirzapur but at a distance of less than eight kilometers from limits of Municipal Corporation, Varanasi.

Petitioners are claiming house rent allowance at the rate applicable to employees who are working within the limits of Varanasi Municipal Limit.

4. This Court vide order dated 19.11.2010 referred this matter to a Larger Bench formulating following three questions:

"(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 Government Order dated 10.12.2002 is violation of Article 14 and 16 of the Constitution of India.

(c) whether the judgement of the Division Bench holding that it is irrelevant as to from which Municipal Board the distance of the institution is less than 8 kilometres, lays down correct law or not."

5. Thereafter Full Bench considered the matter and answered the aforesaid questions vide order dated 18.9.2015 as under:

"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 Special Appeal (Defective) No. 1051 of 2007 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."

6. Learned Standing Counsel did not dispute that in view of Government Order dated 15.12.1981 since admissibility of house rent allowance would be with reference to place of working, petitioners would be entitled for payment of house rent allowance as per rate admissible in Varanasi and not at Mirzapur.

7. In view of above and considering the law laid down by Full Bench vide opinion dated 18.09.2015, we allow this writ petition and direct respondents to pay house rent allowance to petitioners at the rate applicable to similarly placed persons in Varanasi till the aforesaid Government Order dated 15.12.1981 holds the field.

8. Impugned order dated 17.04.2004 passed by District Inspector of School, Mirzapur, respondent 3, taking a different view is hereby set aside.