

(2013) 01 CAL CK 0078
In the Calcutta High Court
Case No : W.P.C.T. No. 88 of 2012

Union of India and Another	Vs	APPELLANT
Subhasish Basak		RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Hindu Marriage Act, 1955 — Section 10

Citation : (2013) 2 CHN 364 : (2013) 137 FLR 84 : (2013) 1 LLJ 609

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Kaushik Chanda and Ms. Debosmita Bhardwaj, for the Appellant;
Subhasish Basak (Party in Person), for the Respondent

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—An interesting yet ticklish issue has been raised in the present petition as to whether the husband of an estranged wife is entitled to House Rent Allowance (hereinafter referred to as HRA) when the wife has been allotted accommodation by her employer which is a nationalised bank. The undisputed facts in the present case are as follows:

The respondent is employed as the Assistant Personnel Officer in Variable Energy Cyclotron Centre, (referred to as VECC hereafter) Department of Atomic Energy. His wife had obtained a residential accommodation from her office, that is, a Public Sector Bank in Kolkata. He informed the authorities concerned accordingly and thereafter the HRA which was being paid to him was discontinued as per his request with effect from 1.6.2009. The respondent claims that he has instituted a suit in the Family Court in Visakhapatnam for a decree of judicial separation u/s 10 of the Hindu Marriage Act. This suit has been filed on 3.3.2010, two years after the marriage. On 11.3.2010 the respondent requested his employer to pay him HRA as he was no longer residing with his estranged wife. By a letter dated 14.5.2010 the respondent was informed that his prayer for the release of HRA could not be entertained as his wife had been allotted accommodation. He was

also informed that unless there was a decree of divorce or judicial separation the respondent was not entitled to HRA.

2. Being aggrieved by this decision, the respondent preferred Original Application 685 of 2011 before the Central Administrative Tribunal Kolkata Bench. The respondent claimed in his application that the petitioner should be directed to pay HRA to him along with arrears with effect from March, 2010 till the "Matrimonial Suit" was disposed of by the Court and further for quashing the order dated 14.5.2010 by which he was denied his prayer for HRA.

3. The petitioners filed a detailed reply before the Tribunal contending therein that HRA was not payable to the respondent herein as a matter of right and it is only when Government accommodation is not available for a Government servant that HRA is payable. It was further contended that in terms of the rules of allotment of Government Accommodation and for payment of HRA the respondent was not entitled to either since his wife, who was working with a Public Sector Bank, had been allotted accommodation by her employer. It was further contended that in terms of SR. 317(B)-(4) of the Allotment of Government Residences (General Pool in Delhi) Rules, 1963 HRA is payable only under certain terms and conditions which the respondent did not fulfil.

4. In his rejoinder, the respondent reiterated the contentions stated in his application and also replied to the legal submissions of the respondent. As there was a delay in filing the application, the respondent had filed a miscellaneous application for condoning the delay of 62 days. That delay was condoned. Another miscellaneous application was filed for listing the matter for final hearing and for carrying out certain amendments. That application was also allowed by the Tribunal. After hearing the parties on the issues urged before it, the Tribunal allowed the original application and directed that the respondent be paid HRA from the date it was prayed for. The Tribunal reasoned that it was abundantly clear that the respondent and his wife could not live amicably in the same house in view of their estranged relationship. The order of the Assistant Personnel Officer refusing to grant HRA has been set aside by the Tribunal. Hence he has filed this petition.

5. The Learned counsel for the petitioners submitted that the Variable Energy Cyclotron Centre in which the respondent is working is a part of the Department of Atomic Energy which has framed rules for the allotment of residences to their employees called the Allotment of Government Residence (Department of Atomic Energy) Calcutta Rules 1994. He pointed out Rule-III which prescribes the circumstances in which a residence to the wife/husband can be allotted where the spouse is employed with Government or its Departments or Public Sector Undertakings and has availed of accommodation granted by the employer. He submitted that unless Rule-III is observed strictly it would not be possible for the petitioners to accommodate their employees, He then invited our attention to the Rules governing payment of HRA. The Learned counsel contended that Rule 5 of the General Rules and Orders as amended in 2008 stipulates the conditions for

drawing of HRA. According to him Rule 5(c)(iii) prevents the disbursement of HRA to an employee if her/his spouse has been allotted an accommodation by the Central Government, State Government, autonomous public sector undertaking etc.

6. The respondent has appeared in person and has succinctly put forth his case. He contends that since he and his wife are living separately, he is entitled to HRA. He submitted that he is eligible for being paid HRA because the rules governing the Central Government staff i.e. Allotment of Government Residences (General Pool in Delhi) Rules, 1963 permit such payment of HRA under SR. 317(B)-(4). According to him the proviso to rule (1) stipulates that in pursuance of an order of judicial separation made by any Court the estranged spouse who is residing separately is entitled to HRA. The respondent submitted that the expression used in the rule which has a statutory force is "in pursuance of which means when a proceeding for judicial separation is pending. He urged that it does not necessarily mean that it is only when an order of judicial separation has been passed by an authority that he is entitled to HRA. He has relied on the dictionary meaning of the expression "in pursuance of in contradistinction to the phrase "pursuant to". The respondent submitted that if the phrase "pursuant to" had been used then the petitioners would be right in contending that unless a decree for judicial separation has been passed the spouse would not be eligible for HRA if his wife/her husband has been allotted quarters.

7. The allotment of quarters to persons employed with the Department of Atomic Energy which includes the employees of VECC such as the respondent is governed by the Allotment of Government Residence (Department of Atomic Energy) Calcutta Rules 1994. Rule-III which is relevant in the present case reads as follows:

Rule-III Allotment to Husband and Wife

(a) No officer shall be allotted a residence under this rule if the wife or the husband, as the case may be, of the officer has already been allotted a residence either by DAE or any other Govt. Deptt. or any PSU unless such residence is surrendered. Provided that this sub-rule shall not apply where the husband and wife are residing separately in pursuance of an order of judicial separation made by any Court.

(b) Where two officers in occupation of separate residence allotted under these rules or any other Govt. department or public sector undertaking marry each other, they shall within one month of marriage surrender one of the residences.

(c) If a residence is not surrendered as required by sub-rule (b) above the allotment of the residence of the lower category shall be deemed to have been cancelled on the expiry of such period and if the residences are of the same category, the allotment of such one of them, as the competent authority may decide, shall be deemed to have been cancelled on the expiry of such period.

(d) Where both the husband and wife are employed in the DAE and its constituent units, or participating Units the title of each of them to allotment of a residence under these rules shall be considered independently.

(e) If a wife or husband, as the case may be, who is an allottee of a residence under these rules, is subsequently allotted a residential accommodation at the same station from a pool to which these rules do not apply she or he, as the case may be, shall surrender any one of the residences within one month of such allotment.

Provided that this clause shall not apply where the husband and wife are residing separately in pursuance of an order of judicial separation made by any Court.

8. As seen from the aforesaid rules the husband and wife who are residing separately "in pursuance of an order" of judicial separation made by a Court would not be prevented from being allotted a residence if one or the other has already been allotted residence by any Government Department or any Public Sector Undertaking. There is no dispute that the respondent's wife is employed in a Public Sector Bank which could be termed a Public Sector Undertaking. The provisions stipulate that the "husband and wife should be residing separately in pursuance of an order of judicial separation made by any Court." This would obviously mean that the judicial separation and the separate residences of the spouses are because of an order passed by a competent Court. It is true that the dictionary meaning of the expression "in pursuance of" is the engagement in an activity or a course of action. "Pursuant to" on the other hand means in accordance with. However while interpreting the aforesaid rule we must adopt a purposive construction rather than interpreting the same *stricto sensu*.

9. The reason for denying the spouse a separate accommodation if the employee has already been granted an accommodation by a public sector undertaking or a Government Department is that the Government would not be required to provide a separate residence for a spouse or to pay the HRA. It is only when an order of judicial separation is passed that the husband and wife would consequently stay separately. Therefore, the Government has for good reason decided that both the husband and wife cannot be allotted quarters till the decree of judicial separation is passed. This is to prevent collusive suits being filed by a couple for obtaining accommodation from the Government and if that is not available HRA.

10. The insistence of the respondent is not for providing accommodation to him but for payment of HRA. It must be borne in mind that HRA is payable only when Government fails to provide accommodation to its employees. In the present case since the respondent is not entitled to accommodation the question of payment of any HRA to him does not arise. Reliance placed by the respondent on the rules in respect of Allotment of Government.

11. Residences (General Pool in Delhi) Rules 1963 is inapt. When the Department of Atomic Energy, of which VECC where the respondent is employed is a part, has

its own rules it is those rules which must govern the allotment of quarters to the employees of VECC. Furthermore, there are certain conditions laid down in the rules which govern payment of HRA to Government Servants. Under Rule 5(c)(iii) a Government servant is not entitled to HRA if his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government, Autonomous Public Undertaking or semi-Government Organizations such as Municipality, Port Trust etc. whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her. There is no dispute that it is these rules which govern payment of HRA. The rule specifically states that HRA is not payable to an employee if his wife/her husband has been allotted accommodation, whether the employee resides in that accommodation or resides separately in any other accommodation. Therefore, in our opinion the entire premise on which the respondent has based his case is erroneous.

12. The respondent has argued before us that compelling him to stay in accommodation allotted to his wife is demeaning and insulting as he has filed a proceeding for judicial separation. He has contended that his Human Rights are violated by forcing him to stay in the same quarters as his wife and by not providing him HRA.

13. These submissions of the respondent, though attractive, are of no avail to him. He is bound by the rules which govern the allotment of accommodation in the department or organization in which he is working. Further, HRA is payable only when accommodation that the Government is to provide to its employees is not available. The respondent has not asked for any accommodation as he is not entitled to the same under "The Allotment of Government Residence (Department of Atomic Energy) Calcutta Rules 1994. He is consequently not entitled to HRA. It is trite that HRA would be payable only when the Government servant is entitled to an accommodation and the Government fails to provide the same.

14. The case of the respondent is without merit. The petition is allowed with no order as to costs.

15. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Anindita Roy Saraswati, J.

I agree