

(2012) 07 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No. 8772 of 2012 (S)

Union of India and Others

APPELLANT

Vs

Ajay Kumar Yadav and Others

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2012) ILR (MP) 1875

Hon'ble Judges : Sanjay Yadav, J;Ajit Singh, J

Bench : Division Bench

Advocate : S.A. Dharmadhikari, for the Appellant; S.K. Nagpal, for the Respondent

Judgement

Sanjay Yadav, J.

Heard.

1. Order dated 18.4.2012 passed by Central Administrative Tribunal, Jabalpur Bench, Jabalpur is being assailed vide this petition under Article 227 of the Constitution of India; whereby claim by respondents for House Rent Allowance from the day they vacated the factory accommodation has been allowed. The respondents are High Skilled employees in Ordnance Factory, Khamaria. While living in Government accommodation allotted to them, they got their individual houses constructed and they shifted in these houses after vacating the government accommodation on 5.12.2005, 8.6.2006, May/2003, 28.1.2005 and 21.5.2006 respectively. Applications were filed by respective respondents for grant of House Rent Allowance but were declined by the petitioners (respondents in Original Application) on the ground that respondents have failed to produce "No Accommodation Certificate".

2. The no accommodation certificate was required, as per the petitioners, because unless established that due to non-availability of government accommodation the employees are required to live in their own accommodation

in a rented accommodation, they are not entitled for the house rent allowance. And the same being an allowance and not an element of pay, the condition precedent unless fulfilled did not entitle them for the house rent allowance.

3. The respondents being aggrieved, preferred original application before the Tribunal who by order dated 8.2.2011 allowed the claim of the respondents solely on the ground of promissory estoppel, that, employees having constructed the houses after availing the loan and prior permission would bind the employer. This order, however was set aside by a Division Bench of this Court in W.P. No. 6263/2011 (S) on 25.4.2011 holding that in absence of pleading relating to promissory estoppel, the Tribunal was not justified in allowing the application only on the basis of principle of Promissory Estoppel. The matter was remitted for decision afresh.

4. On remand, the Tribunal by impugned order has allowed the application directing the petitioners herein to grant HRA to the respondents from the date they vacated the government accommodation along with interest @9% per annum if the amount is not paid within 60 days and cost of Rs. 500/-.

5. The Tribunal to arrive at the conclusion in favour of respondents workmen relied upon: (i) ratio of order dated 9.2.2012 in O.A. No. 117/2009, (ii) circular dated 9.4.2003; (iii) letter dated 2.4.2009 and (iv) letter dated 16.11.2009.

6. The employer being aggrieved by the order has filed this petition, assailing the order by Tribunal on the ground that the Tribunal has committed grave folly in adjudicating the claim in favour of workmen on the basis of superseded circular and contrary to the General Rules and orders issued in respect of entitlement of House Rent Allowance.

7. Contentions and counter-contentions were put-forth for and against the claim for House Rent Allowance. Whereas, the petitioners employer placing reliance on various circulars had put-forth that the Tribunal erred in granting the claim in absence of no accommodation certificate, an imperative precondition for the said grant. The employees on their part placing reliance on the instances wherein certain employees have been given the House Rent Allowance who are residing in private houses, supports the decision by the Tribunal. The employer during course of hearing have, however, denied the allegation that, the house rent allowance is being paid without obtaining the No Accommodation Certificate.

8. Issue which crops up for consideration is whether a no accommodation certificate is a condition precedent for grant of House Rent Allowance.

9. The House Rent Allowance, trite it is, is not a part of wages but is a compensatory allowance as defined under Fundamental Rule 44, which stipulates:

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.

10. It is held in Director, Central Plantation Crops Research Institute, Kesaragod and Others Vs. M. Purushothaman and Others, that:

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

11. Thus, General Rules and Orders issued by the Central Government which governs the amount and conditions for grant of House Rent Allowance. The respondents employees are not exception to these conditions.

12. The Master Circular which governs the condition precedent for grant of HRA is the Office Memorandum issued by Government of India, Ministry of Finance, No. F-2(37)-E. II (B)/64 dated 27th November 1965.

13. Paragraph 4, 7 and 8 of the Office Memorandum dated 27.11.1965 lays down the conditions precedent for grant of HRA. It is stipulated therein:

4. The grant of House Rent Allowance shall be subject to the following conditions:-

(a) (i) To those Government servants who are eligible for Government accommodation, the allowances will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any, but have not been provided with it, in places where due to availability of surplus Government accommodation, special orders are issued by the Ministry of Urban Development from time to time making it obligatory for employees concerned to obtain and furnish "no accommodation" certificate in respect of Government residential accommodation at their place of posting. In all other places, no such certificate is necessary.

(ii) Government servants posted in localities where there is at present no residential accommodation in the General Pool owned or requisitioned by the Central Government for allotment to them, need not apply for Government residential accommodation in order to become eligible for House Rent Allowance. But where Government quarters are available for the staff of specified Departments or for specified categories of staff, the procedure for applying for accommodation will be regulated under the rules of allotment of the Department concerned or of the local office of the Central Public Works Department, as the case may be.

(b) (i) The allowance shall not be admissible to those who occupy

accommodations provided by Government or those to whom accommodation has been offered by Government but who have refused it. In the latter case, the allowance will not be admissible for the period for which a Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him.

(ii) The House Rent Allowance drawn by a Government servant, who accepts allotment of Government accommodation, shall be stopped from the date of occupation, or from the eighth day after the date of allotment of Government accommodation, whichever is earlier. In case of refusal of allotment of Government accommodation, House Rent Allowance shall cease to be admissible from the date of allotment of Government accommodation. In case of surrender of Government accommodation, the House Rent Allowance, if otherwise admissible, will be payable from the date of such surrender.

7. (i) A Government servant living in a house owned by him, his wife, children, father or mother shall also be eligible for House Rent Allowance under these orders. ***

(ii) ***

(iii) In the case of a Government servant who owns a house at a place of duty but resides in a rented house instead, House Rent Allowance shall be paid in respect of the rented house, if otherwise admissible.

8. (a) Every Government servant shall furnish along with his first claim for House Rent Allowance, a certificate in the Form given in Annexure-II.

(b) While Non-Gazetted Officers shall furnish the requisite certificates to their Head of Office, Gazetted Officers shall furnish the same to their Accounts Officers.

(c) The following certificates shall be endorsed by the Drawing and Disbursing Officers on the bill in which Compensatory (City) and House Rent Allowances of Non-Gazetted Officers are drawn by them;-

(i) Certified that in the case of all Government servants for whom Compensatory (City) and/or House Rent Allowances are drawn in this bill, the eligibility of the Allowance(s) has been verified with reference to Paragraph 3 of the Government of India, Ministry of Finance, O.M. No. 2 (37)-E. II (B)/64, dated 27.11.1965.

(ii) Certified that the Government servants for whom House Rent Allowance is drawn in this bill (have applied for but) have not been provided with any Government accommodation.

(iii) Certified that the certificates prescribed by Government have been obtained from the Government servants for whom House Rent Allowance has been drawn in this bill and I am satisfied that the claims are in accordance with the orders in

force.

14. The certificate referred to in paragraph 8 of Office Memorandum dated 27.11.1965 is in following term:

Certificate to be furnished by all Central Government servants

(1) I certify that I have applied for the Government Accommodation in accordance with the prescribed procedure but have not been provided with Government accommodation/have refused the allotment of Government accommodation during the period in respect of which the allowance is claimed.

(2) I certify that I am residing in a house hired/owned by me/my wife/husband/son/daughter/father/mother/a Hindu undivided family in which I am a coparcener.

(3) I certify that I am incurring some expenditure on rent contributing towards rent

Or

I certify that the rent value of the house owned by me/owned by a Hindu undivided family in which I am a coparcener and in which I am residing is ascertainable in the manner specified in Para. 7 of O.M. No. F. 2 (37)-E. II (B)/64, dated 27.11.65. I certify that I am paying/contributing towards house or property tax.

(4) I certify that I am not sharing accommodation allotted to my parent (child) by the State/Central Government, an autonomous public undertaking or semi-Government organisation such as municipality, port trust, etc., allotted rent-free to another Government servant.

(5) I certify that my husband/wife/children/parents who is/are sharing accommodation with me allotted to another employee of the Central/State Government/autonomous public undertakings or semi-Government organizations like municipality, port trust, etc., is/are not in receipt of house rent allowance from the Central/State Government/autonomous public undertaking or semi-Government organizations like municipality, port trust, etc.

(6) I also certify that my wife/husband has not been allotted accommodation at the same station by the Central/State Government/autonomous public undertakings or semi-Government organizations such as municipality, port trust, etc.

Signature.....

Designation.....

Date

15. Thus, under the Rules, imperative it is to have no accommodation certificate for grant of HRA, and being a condition precedent unless issued and produced an

employee will not be entitled for the grant of HRA. In this context reference can be had of the observations in *Director, Central Plantation Crops Research Institute, Kesaragod and others v. M. Purushothaman and others* (supra) which is in context to paragraph 4 of office memorandum dated 27.11.1965:

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 to 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(a) (i) and (ii). Whereas paragraphs 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 miss 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.

16. The case at hand is to be examined in the light of these rules and orders.

17. The circular dated 9.4.2003, principally being relied by the Tribunal while adjudicating claim in favour of the respondents workman, no doubt states that, a "no accommodation certificate" be not mixed up with no occupancy certificate and where there is no occupancy the HRA be released to such employees who

vacate factory quarters after constructing their own house obtaining loans/HBA from government or from outside government sponsored agencies. The said order thus dilutes the imperative condition precedent stipulated by office memorandum dated 27.11.1965, adopted by Directorate of Estates Office memorandum dated 9.9.1988.

18. The circular dated 9.4.2003 was later on kept in abeyance vide Instruction No. 3129/A/A dated 10.8.2007 stating therein:

That, the matter has been reviewed in the light of the existing government orders/SRO and also on the basis of reference received from the factories. On review it has been decided that the instructions contained in the circular referred above dated 9th April 2003, shall be kept in abeyance, with immediate effect.

19. Thereafter vide Instruction No. 3165/A/A dated 6.6.2008 the said circular was withdrawn after seeking clarification from Ministry of Defence. The clarification by Ministry of Defence on 31.3.2008, is in the following terms:

OFB's above proposal has been considered in consultation with Ministry of Urban Development. Ministry of Urban Development has forwarded a copy of their instructions issued by O.M. No. F. 12034/1/2007-Pol. III dt. 14.11.2007 issued in this regard for taking further necessary action in the matter (copy enclosed).

2. OFB is requested to follow the instructions issued by Ministry of Urban Development without deviation, i.e., H.R.A. can be paid only if government accommodation is not available. OFB is also requested to address audit observations appropriately.

20. The question now would be whether with the withdrawal of the circular dated 9.4.2003 by Instruction No. 3165/A/A any right survives in favour of claimants like the respondents herein. True it is that, by letter dated 31.3.2009 the effect of circular dated 9.4.2003 has been preserved till 10.8.2007 the date from which it was suspended. But whether with the withdrawal of circular dated 9.4.2003 by order dated 6.6.2008 any right would accrue in favour of the persons like respondents who though had vacated the government quarters prior to 10.8.2007 but the HRA was not claimed nor granted. Or, the effect of the letter dated 31.3.2009 would be to protect such employees in whose favour the HRA was disbursed till 10.8.2007 when the circular dt. 9.4.2003 was suspended.

21. The circular dated 9.4.2003 as apparent therefrom is issued with the approval of Chairman/Director General Ordnance Factories and does not have the concurrence of Ministry of Finance, the authority which has issued "the Master Circular dated 27.8.1965 adopted by the Government of India, Directorate of Estate vide O.M. No. 1234 (1)88 -Pol. III dt. 9th September 1988. Even for the sake of argument, it is assumed that it was within the competence of the Chairman/Director General Ordnance Factories to have issued such circular as dated 9.4.2003, but with its withdrawal on subsequent date no right can be made to survive thereafter. A right having fructified, i.e., payment of HRA made

during the currency of the circular dated 9.4.2003 stands at a different footing in that case, the right having accrued, no recovery would be permissible.

22. Thus, letter dated 31.3.2009 having limited scope of operation does not lead to revival of right to receive HRA contrary to the stipulations contained in the Master Circular dt. 27.11.1965. The Tribunal, therefore, in our considered opinion is not justified in adjudicating the claim in favour of the respondent employees of their right to receive HRA without furnishing the "no accommodation certificate". For these reasons we quash the impugned order dated 18.4.2012 and hold that unless an employee furnishes a no accommodation certificate as is required under paragraph 4 and 8 of the memorandum dated 27.11.1965, they are not entitled for the HRA. The petitioners would be entitled to review past cases in accordance herewith and if some employees are found to be not entitled shall after giving them an opportunity of hearing pass orders in accordance with law.

The petition is disposed of finally. No costs.