

(2014) 07 GUJ CK 0112

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1430 of 2013 in Special Civil Application No. 3509 of 1991 with Civil Application No. 13082 of 2013 in Letters Patent Appeal No. 1430 of 2013

Vadodara Jilla Prathmik Sikash Sangh

APPELLANT

Vs

Taluka Development Officer

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Citation : (2015) 1 GLR 400 : (2015) LabIC 1365

Hon'ble Judges : V.M. Sahai, J;R.P. Dholaria, J

Bench : Division Bench

Advocate : Vaibhav A. Vyas, Advocate for the Appellant; H.S. Munshaw, Advocate and Harsheel Shukla, AGP, Advocate for the Respondent

Judgement

R.P. Dholaria, J.—The present Letters Patent Appeal under clause 15 of the Letters Patent is directed against the judgment and order dated 25.7.2012 rendered by the learned Single Judge in Special Civil Application No. 3509 of 1991 whereby the learned Single Judge dismissed the petition filed by the appellant herein.

2. The facts of the case in brief are that prior to resolution dated 2.5.1991 passed by respondent No. 1-Taluka Development Officer, the teachers who were paid basic pay of Rs. 1500/- were getting Rs. 450/- House Rent Allowance ("HRA" for short) and Rs. 50/- Compensatory Local Allowance ("CLA" for short) per month. Similarly, the teachers who were receiving their salaries less than the basic pay of Rs. 1500/- per month were being paid Rs. 250/- as HRA and Rs. 35/- as CLA per month. It is the case of the appellant that by virtue of the impugned resolution dated 2.5.1991 passed by respondent No. 1-Taluka Development Officer, the benefits of HRA and CLA given to the teachers, as aforesaid, have been taken away arbitrarily. Being aggrieved, the appellant-original petitioner preferred Special Civil Application No. 3509 of 1991. Learned Single Judge dismissed the writ petition by judgment and order dated 25.7.2012

which is impugned in the present appeal.

3. The main grievance of the appellant-original petitioner in the writ petition was that respondent No. 1-Taluka Development Officer illegally and arbitrarily passed the resolution by which the benefits of HRA and CLA paid to the members of the appellant-Sangh have been ordered to be stopped and consequently, recovery was sought to be effected.

4. Heard learned advocate Mr. V.A. Vyas for the appellant, learned advocate Mr. H.S. Munshaw for respondent Nos. 1 and 3 and Mr. Harsheel Shukla, learned AGP for respondent No. 2.

5. Learned advocate Mr. V.A. Vyas for the appellant has vehemently contended that the action of respondent No. 1 is illegal and arbitrary which takes away the benefits of HRA and CLA conferred upon the members of the appellant. He further submitted that consequential action of recovery pursuant to the resolution dated 2.5.1991 is also in violation of the principles of natural justice as the members of the appellant have not been given opportunity of being heard before passing the impugned resolution. He submitted that the members of the appellant are working in classified villages within the periphery of 8 kms from the municipal limits of the urban city. He further submitted that as per the policy of the Government as contained in Government Resolutions dated 22.10.1975, 15.12.1975 and 1.9.1978, the Government employees whose place of duty is in the proximity of a classified city and who of necessity have to reside within the city may be granted HRA admissible in that city provided that the distance between the place of duty and periphery of the municipal limits of the classified cities does exceed 8 kms and since the members of the appellant were complying with the conditions specified in the said Government Resolution dated 15.12.1975, they were paid HRA after having been sanctioned by the competent authority.

5.1. Mr. Vyas further submitted that during the period of 1990-1991, objection was raised during the audit by the authority concerned and in pursuance of the same, respondent No. 1 passed the impugned order dated 2.5.1991. In his submission, when the members of the appellant were working within the periphery of 8 kms from the municipal limit of urban city and they were complying the requisite conditions stipulated in Government Resolution dated 15.12.1975, the learned Single Judge ought to have considered the same. Lastly, Mr. Vyas submitted that the impugned order dated 2.5.1991 as well as the judgment and order dated 25.7.2012 passed in Special Civil Application No. 3509 of 1991 are required to be quashed.

6. On the other-hand, learned advocate Mr. H.S. Munshaw for respondent Nos. 1 and 3 and learned AGP Mr. Harsheel Shukla for respondent No. 2 have contended that the impugned orders are perfectly legal and proper in view of the audit objection raised at the time of audit by the authority concerned. It is submitted that the right of individual member to receive HRA/CLA depends upon his

individual case and one has to satisfy the concerned competent authority that he/she is living in the city and under compelling circumstances, the individual member of the appellant has to take certificate to that effect and under some misconception, the aforesaid benefits were granted. It is submitted that the employees who are residing within the periphery of 8 kms from the municipal limit of the city are entitled for HRA/CLA and hence, recovery sought to be effected by respondent No. 1 is just and proper which does not call for interference by this Court.

7. Having heard learned advocate Mr. V.A. Vyas for the appellant, learned advocate Mr. H.S. Munshaw for respondent Nos. 1 and 3 and learned AGP Mr. Harsheel Shukla for respondent No. 2 in light of the papers available on record, the question which requires consideration is whether the members of the appellant-original petitioner are entitled to receive the benefit of HRA/CLA or not if the place of duty of an employee concerned is situated at a point within 8 kms beyond the municipal limits of a qualifying town, but who are residing within the limits of such a town out of necessity ?

8. At this stage, it would be fruitful to mention that the learned Single Judge, after hearing learned advocates for both the sides, has passed the following order.

11. In view of the above discussion, this court is of the view that the impugned order does not call for any interference by this Court and the petition deserves to be dismissed. However, it is required to be noted that subsequently if the petitioner is in a position to show that the members of the petitioner organisation are entitled as per any of the Government Resolutions they shall be paid accordingly. Petition stands dismissed accordingly.

8.1. A bare perusal of the aforesaid order clearly indicates that on one hand, the learned Single Judge has dismissed the writ petition and on the other-hand, the learned Single Judge has also extended the relief to the petitioner to prove their case whether they are entitled as per any of the Government Resolutions and they shall be paid accordingly.

9. In light of the aforesaid rival contentions raised before us by learned advocates for the parties, we have minutely perused various Government Resolutions issued by the Government from time to time for granting benefits of HRA/CLA. It is also not in dispute that in view of the aforesaid Government Resolutions issued from time to time, such benefits of HRA/CLA have been extended to the concerned employees.

10. The question of stoppage of payment with regard to HRA/CLA has arisen due to audit objection raised by the Local Audit Funds office for the year 1990-1991 wherein it is observed that while making the payment of HRA/CLA in case of some of the employees, payment appears to have been made without due verification in light of the stipulation made in Government Resolution No. PJS/3475/41/M dated 15.12.1975 issued by the Finance Department, Government of Gujarat. In the said audit objection, it is observed that so as to

fully comply with the Government Resolution dated 15.12.1975, the competent authority is required to undertake the following exercise to verify in each individual case about correctness of such fact, (i) whether an employee is residing within 8 kms radius from the municipal limits and to continue the practice to obtain the certificate in this regard (ii) if an employee concerned has to reside within the radius of 8 kms from the municipal limits out of necessity for want of accommodation from his/her service place and to verify the same, the following documents are required to be kept in the office; (a) certificate stating accommodation is not available near the place of duty; (b) to obtain ration card, municipal tax receipt and electricity bill so as to verify whether an employee is residing in the municipal limits; (c) the competent authority must have accorded approval for up and down of the concerned employee from municipal limits to the place of duty.

11. It appears that on receipt of the aforesaid abstract of the audit report, respondent No. 1-Taluka Development Officer vide his order dated 2.5.1991 on one hand directed that in Urban Agglomeration area, except villages Chhani, Ajwa, Tarsali and Mandsheri of Vadodara Taluka, no other villages are covered. Therefore, HRA/CLA paid to the employees who are not residing in the aforesaid area is required to be stopped with immediate effect and on the other-hand, it is also directed that the employees who are residing in the villages except the aforesaid four villages, in that case, the aforesaid exercise of verification and obtaining necessary certificate as suggested by the audit report is required to be done and on satisfying the conditions of the Government Resolution dated 15.12.1975 by the employees concerned, the benefit of HRA/CLA is to be given.

12. During the course of hearing, we have also noticed that in the list, almost 89 villages are shown to be falling within the limit of urban agglomeration area of Vadodara City as provided in the schedule annexed along with the order dated 30.4.1984 passed by the Taluka Development Officer at Annexure-B to the writ petition, whereas for the same purpose, the Collector has certified vide his order dated 29.4.1975 that 61 villages are falling within the limit of urban agglomeration area of Vadodara City. In this view of the matter it was the duty of the competent authority to verify as to exact number of villages which are falling within the limit of urban agglomeration area of Vadodara City as stipulated in the aforesaid Government Resolution dated 15.12.1975. Therefore, in our view, the aforesaid exercise is required to be undertaken by the competent authority forthwith to ascertain as to which villages are falling within the limit of urban agglomeration area of Vadodara City and to decide claim and entitlement of the concerned employees accordingly.

13. Precisely, on our careful reading of the abstract of the audit report as well as the circular issued by respondent No. 1-Taluka Development Officer on 2.5.1991, it clearly transpires that respondent No. 1 has merely recorded in the impugned order that in view of abstract of audit report, the aforesaid four villages are falling within urban agglomeration area and except for the aforesaid villages,

exercise as narrated hereinabove regarding the claim and entitlement of HRA/CLA by the concerned employee is required to be undertaken by the competent authority. Nowhere, it clearly reveals either from the abstract of the audit report or the impugned circular issued by respondent No. 1 that except the aforesaid four villages shown in urban agglomeration, the employees who are not residing in the said four villages and their claims are admissible in view of entitlement decided under the Government Resolution dated 15.12.1975, their claims are directed to be stopped for payment. On the contrary, it clearly transpires that while making the payment, the duty is cast upon the competent authority to verify whether the claim of the concerned employee falls within the criteria stipulated under the Government Resolution dated 15.12.1975.

14. Precisely, in our considered view, the aforesaid abstract of audit report as well as the circular issued by respondent No. 1 dated 2.5.1991 is in the nature of reiteration of the Government Resolution dated 15.12.1975. In the said resolution, the Finance Department, Government of Gujarat has made detailed provision for payment of HRA/CLA to the employees who are entitled under the said Government Resolution and while making the payment, certain verification and certification is also directed to be made. In this view of the matter, nothing new is said either in the audit report or by respondent No. 1. The question that has arise is it is a matter of financial implication and while making the payment of benefit of HRA/CLA, proper verification and certification was needed. Instead of doing the said exercise, it appears that, the authority has stopped the benefits of HRA/CLA without carrying proper verification and certification in each case and the authority on its own stopped the payment of aforesaid benefit of HRA/CLA and other benefits admissible to them. In our considered view, that was not the purpose of audit report as well as the circular issued by the respondent No. 1. On the contrary, it was in furtherance of the stipulation made in the Government Resolution dated 15.12.1975.

15. The gist of the aforesaid Government Resolution clearly stipulates that the employees who are residing within radius of 8 kms of the municipal limit are entitled for the aforesaid benefit of HRA/CLA on production of proof of their residence. So far as the employees who are residing in the villages which are classified within radius of 8 kms beyond the municipal limits due to nonavailability of accommodation are concerned, while deciding their claims, firstly, the competent authority is required to verify whether the villages in which the concerned employees are residing are falling in the notified urban agglomeration area of the municipal limit and whether the concerned employees are fulfilling and satisfying the conditions stipulated in the Government Resolution dated 15.12.1975.

16. In the result, this appeal succeeds in part. The impugned order dated 2.5.1991 passed by respondent No. 1-Taluka Development Officer directing to stop the payment of HRA/CLA for the villages except the four villages i.e. Chhani, Ajwa, Tarsali and Mandsheri of Vadodara Taluka at the rate that was applicable

for Vadodara is quashed and set aside. Therefore, in the peculiar facts and circumstances of the case and since the interest of large number of employees is involved, we deem it fit to issue the following directions to the respondents.

(i) The respondents to carry out verification and certification needed under the Government Resolution dated 15.12.1975 issued by the Finance Department, Government of Gujarat and permit the employees concerned to prove genuineness of their claim and entitlement for HRA/CLA.

(ii) As there is financial implication while making the payment of HRA/CLA, the respondent authorities are further directed to ascertain from the controlling authority as to which villages are falling within the radius of 8 kms from municipal limits as there appears variance in the list of villages furnished along with the audit report as well as respondent No. 1.

(iii) On completion of the aforesaid exercise, the respondent authorities are directed to decide entitlement of benefits of HRA/CLA to the concerned employees who have satisfied the criteria laid down in the Government Resolution dated 15.12.1975 of the Finance Department, Government of Gujarat.

(iv) The respondents are directed to carry out the aforesaid directions within a period of three months from the date of receipt of the copy of this order.

Subject to the aforesaid directions, the appeal stands partly allowed to the aforesaid extent indicated hereinabove. No costs.

In view of the above order, Civil Application does not survive and the same stands disposed of accordingly.