

(2003) 07 JH CK 0002

Jharkhand High Court

Case No: C.W.J.C. No. 1007 of 1994 (R)

Upendra Nath Singh

APPELLANT

Vs

Bharat Coking Coal Ltd. and
Others

RESPONDENT

Date of Decision: July 21, 2003

Acts Referred:

- Constitution of India, 1950 - Article 226
- House Rent Allowance Rules - Rule 3.2

Citation: (2004) 2 JCR 398

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: M.M. Banerjee, for the Appellant; A.K. Mehta, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.

The petitioner, a Senior Executive Engineer of M/s. Bharat Coking Coal Limited (for short BCCL) has challenged

the order dated 19th January, 1994, whereby and whereunder, the General Manager (EE), BCCL, Dhanbad In formed the General Manager

(HRD), BCCL, Dhanbad that the petitioner is drawing House Rent Allowance, though his wife Smt. Tara Kumari Singh, Head Mistress of Nehru

Balika Vidyalay at Bhuli has been allotted Company's accommodation at Bhuli with effect, from 26th June, 1991. It was further informed that the

competent authority has discontinued the grant of House Rent Allowance and it was directed to recover the payment of House Rent Allowance

already made to the, petitioner w.e.f. 26th June, 1991.

2. The consequential letter of recovery,, contained in Ref:BCCL/HRD/DS/175. dated 21st January, 1995 issued by the General Manager (HRD),

Dhanbad for recovery of amount w.e.f. 26th June, 1991 has also been challenged.

3. Admittedly, the wife of the petitioner Smt. Tara Kumari Singh is not in the services of BCCL. She was Head Mistress of a Private School aided

by the BCCL. She was allotted the Company's Quarters earmarked for the Head Mistress of the School, w.e.f. 26th June, 1991. The only

question arises whether the petitioner in such circumstances, was entitled to get House Rent Allowance or not.

4. One of the grounds taken by the petitioner is that he was not residing with his wife being posted about 8 kms. away from the Quarters allotted

to his wife. The petitioner claimed that he was residing in a rented house of one Shri Akhilesh Prasad Singh and produced relevant rent receipts in

support of his claim. But the aforesaid stand taken by the petitioner was not accepted by the respondents. According to the respondents, the

petitioner merely affixed a name plate in the aforesaid private house, but was residing with his wife.

5. The other stand taken by the petitioner is that the Rule 3.2 of "House Rent Allowance Rules" is not applicable in the present case and the

respondents cannot recover any amount.

6. From Rule 3.2 of the "House Rent Allowance Rules", it will be evident that if both the husband and wife are employees of the Company

working within a radius of 8 kms. from each other, only one of them, at the option of the couple, is entitled for the House Rent Allowance.

7. Admittedly, the petitioner's wife Smt. Tara Kumari Singh is not an employee of the Company (BCCL). Thereby, the respondents cannot apply

Rule 3.2 in the case of the petitioner and his wife.

8. Whether the petitioner was residing with his wife or was residing separately in a rented house, is a question of fact, which cannot be determined

by this Court under writ jurisdiction. The aforesaid question of fact has also not been decided by any competent authority or a Court of competent

jurisdiction.

9. In the aforesaid background, even if the petitioner is living with his wife, as Rule 3.2 of the "House Rent Allowance Rules" will not be applicable

in the case of petitioner and his wife, the respondents cannot recover any amount from the salary of the petitioner, giving reference of the said Rule,

nor they can withhold the House Rent Allowance Rules on the ground that his wife has been allotted a Quarter.

10. In the aforesaid circumstances, as the orders contained in letters dated 19th January, 1994 (Annexure 5) and 21st January, 1994 (Annexure 6)

cannot be upheld, they are set aside.

11. The respondents are directed to pay back the petitioner, the amount, if any recovered, or any amount which the petitioner is entitled as House

Rent Allowance Rules, but not paid, in accordance with law.

12. The writ petition is allowed with aforesaid observations and directions. However, there shall be no order, as to costs.