

(2016) 09 JH CK 0012

JHARKHAND HIGH COURT

Case No: Writ Petition (S) No. 5235 of 2015

Nirupma Chaudhary

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: Sept. 7, 2016

Acts Referred:

- Bihar State Employees (House Rent Allowance) Rules, 1980 - Rule 6
- Constitution of India, 1950 - Article 226

Citation: (2016) 4 JLJR 639

Hon'ble Judges: Mr. H.C. Mishra, J.

Bench: Single Bench

Advocate: J.C. to G.P.II, for the Respondent; Mr. Rajesh Kumar, Advocate, for the Petitioner

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and learned counsel for the respondent State.

2. The petitioner is a State Government employee, being Assistant Teacher in Government Harijan Balak Middle School, Doranda, Ranchi. The husband of the petitioner is a Central Government employee, working as Assistant Audit Officer, in the Office of Accountant General (Audit), Jharkhand, Ranchi. Earlier the petitioner was residing with her husband in the Government's quarter in Doranda, but subsequently, they purchased a flat of their own and they shifted in their own flat in the month of January, 2008. The petitioner, when she was living with her husband in the Government's quarter, did not claim any House Rent Allowance, but after shifting in their own flat, the petitioner gave her application on 6.5.2008 to the District Superintendent of Education, Ranchi, for allowing her the House Rent Allowance, w.e.f. month of February 2008, as the Government quarter, in which she

was residing with her husband, had been surrendered in the month of January, 2008. In spite of the said representation, the petitioner was not granted the House Rent Allowance, which compelled the petitioner to file this writ petition praying for a mandamus upon the respondent authorities directing them to make the payment of admissible House Rent Allowance to the petitioner w.e.f. the month of February 2008.

3. Learned counsel for the petitioner has submitted that the Central Government had made the clarification on 8th November, 1988, in this regard as is available in Swamy's compilation of HRA and CCA, in which it is stated that the Central Government had decided that no restriction should be imposed on the drawl of HRA only on the ground that the husband/wife is also a Government servant and is living together in the hired/owned accommodation. In such cases, normal amount of HRA may be granted to them as per their entitlement subject to fulfilment of other conditions for drawal of the allowance. It has also been submitted by the learned counsel for the petitioner that the State of Bihar had also framed House Rent Allowances Rules in the year 1980, which is in force in the State of Jharkhand, but in the said Rules also, there is nothing to prevent the admissibility of HRA to one spouse, in case, both the husband and wife are Government servants and they are living in their own house. Learned counsel for the petitioner has also brought on record the amendment in HRA Rules framed by the State Government, to show that the HRA Rules framed by the State Government are based on the Rules framed by the Central Government. Learned counsel further submitted that in similar matters in **CWJC No. 1136 of 1994 (R) and CWJC No.1298 of 1994(R), in the matters of Awadhesh Kumari Verma and Another v. State of Bihar** and Mrs. Kiran Srivastava and Ors. v. State of Bihar and Ors., respectively, which were decided on 24.02.1995, the HRA had been allowed to the other spouse also, when both of them were the Government servants.

4. Learned counsel for the State on the other hand has opposed the prayer and pointed out from the counter affidavit filed on behalf of the respondent State that the husband of the petitioner is getting the House Rent Allowance from the Office of Accountant General (Audit), Jharkhand, Ranchi. It has been submitted that as per the HRA Rules framed in the year 1980, the petitioner shall not be entitled to any HRA. In this connection, learned counsel has placed reliance upon Rule (6&x) of HRA Rules, 1980 and has submitted that the petitioner shall not be entitled to the HRA, once the husband of the petitioner is getting the HRA and both of them are living in the same house.

5. Rule (6&x) of the H.R.A. Rules, 1980 framed by the State Government reads as follows:-

x & ljdkjh lsod edku HkkM+k HkRrk dk gdnkj ugha gksxk ;fn&

(i) og mls vkoafVr fdjk;k eqDr ljdkjh okl nwlij s ljdkjh lsod ds lkFk lk>k djrk gks] ;k

(ii) og mlds ekrk&firk@iq=@iq=h dks dsUnz ljdkj] jkT; ljdkj] Lo"kklh yksd midze ;k v)Zljdkjh laxBu] ;Fkk] uxjikfydk] iksVZV~LV] jk"V~h;d`r cSad] thou chek fuxe] vkfn }jkj vkoafVr okl esa fuokl djrk@djrh gksA

(iii) mldh iRuh@mlds ifr dks dsUnz ljdkj] jkT; ljdkj] Lo"kklh yksd midze ;k v)Zljdkjh laxBu] ;Fkk] uxjikfydk] iksVZV~LV vkfn }jkj mlh Lfkku ij vkokl vkoafVr fd;k x;k gks] vkSj og ml vkokl esa jgrk@jgrh gks ;k og fdjk, ij fy, x, vyx vkokl esa jgrk gksA

?k & useh rkSj ij fdjk;k&jlhn dk v)Zokf"kZd ijh{k.k vfHk;qDr dj fn;k tk,xk] dk;kZy;&iz/kku] jktif=r ljdkjh lsod ds ekeys esa foHkkxk/;{k ;k ljdkjh lsod dsl ekeys esa foHkkxk/;{k ;k ljdkjh lsod Lo;a foHkkxk/;{k gks] rks iz"kklh foHkkx dks fdjk;k&jlhn dh tkWap&ijh{k.k djus rFkk nkok fd;k x;k fdjk;k ;qfDr;qDr gS ;k ugha bl ij fopkj djus dk vf/kdkj gksxkA

M- & [k.M d vkSj [k ds viokn Lo:i] 1]069 :0 rd osru izkIr djus okyk vius LokfeRo okys edku esa jgus okyk ljdkjh lsod ls fHkUu 1]069 :0] rd osru izkIr djus okys ljdkjh lsod ;fn vU; ljdkjh lsodksa mUgsal NksM+dj ftudk mYys[k mij x esa fd;k x;k gS] dks vkoafVr vkokl esa lk>s esa jgrk gks ;k vU; ljdkjh lsod mUgsa lfgr ftudk mYys[k x (iii) esa fd;k x;k gSA ds futh vkokl esa jgrk gks rc Hkh fu;e 3 esa fofufnZ"V njksa ij edku HkkM+k HkRrk ikus dk ik= gksaxs dsoy bl "krZ ds v;/khu fd] os fdjk;k nsrs gksa ;k fdjk;k en esa ;k edku ;k lEifRr dj en esa va"knku djrs gksa] fdUrq okLro esa Hkqxrku ;k va"knku dh tkusokyh dk izfrfunz"k ugha fd;k tk;sxkA fu;e 8 ds viokn Lo:i] ,sls ljdkjh lsod] ftudk osru 1]069 :0 ls vf/kd u gks] tks vius edku esa jgrk@jgrh gks ;k ml fgUnw vfoHkkftr ifjokj ds LokfeRo okys edku esa jgrk@jgrh gksa ftldk og lgHkkxhnkj gks] dks edku HkkM+k HkRrk uxjikfydk izkf/kdkjh }jkj ;Fkkfu/kkZfjr ldy HkkVd ewY; dh jkf"k dh izfrfunz"k fd, cxSj fn;k tk;sxkA bl izdkj] ,sls vf/kdkjh lsodksa ds ekeys esa] edku HkkM+k HkRrk ds nkok ds iz;kstukFkZ uxjikfydk izkf/kdkfj;ksa }jkj fu/kkZfjr HkkVd & ewY; izLrqr djus ds fy, ugha dgk tk;sxkA

fVIi.kh%& ,sls ekeyksa esa] tgkWa ifr@iRuh] ekrk&firk] cPps esa ls nks ;k vf/kd dsUnz ljdkj dk ljdkjh lsod ;k jkT; ljdkj] Lo"kklh yksd midze ;k v)Zljdkjh laxBu] ;Fkk] uxjikfydk] iksVZV~LV] jk"V~h;d`r cSad Hkkjrh; thou chek fuxe] vkfn dk deZpkjh gks] vkSj nwljs ljdkjh lsod dks vkoafVr vkokl esa lk>k jgrk gks ogkWa mudh bPNkuqlkj fdlh ,d dks gh edku HkkM+k HkRrk vuqekU; gksxkA

The plain reading of the aforesaid Rule clearly shows that there is nothing in this Rule to prevent the admissibility of HRA to one spouse, in case, both the husband and wife are Government servants and they are living in their own house.

6. In the present case, admittedly, though both the petitioner and her husband are Government servants, they are not residing in any Government quarter, rather they are residing together in their own flat. Admittedly, the petitioner had not claimed any HRA for the period, they were residing together in Government's quarter allotted to her husband. It is only after surrendering the Government's quarter and shifting in their own accommodation, the petitioner has claimed the HRA. In the entire Rule placed by learned counsel for the State, there is no provision to show

that, when both the spouses are Government servants and they are living together in their own house, and if one of the spouses is getting the House Rent Allowance, the other shall not be entitled to the same. Thus, in my considered view, the submission of the learned counsel for the State that the petitioner is not entitled to the HRA, has no legs to stand.

7. In view of the aforementioned discussions, the respondent authorities are directed to release the admissible HRA to the petitioner w.e.f. the month of February 2008, after the petitioner and her husband left the Government quarter and they are living together in their own flat. The respondents are directed to make the payment of the arrears of admissible HRA, together with the current admissible HRA to the petitioner, positively within the period of two months after communication/production of this Order.

8. This application is accordingly, allowed with the directions as above.