
Nirupma Chaudhary Vs State of Jharkhand

Writ Petition (S) No. 5235 of 2015

Court: JHARKHAND HIGH COURT

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), Jharkhad,

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 Isod edku HkkM+k HkRrk dk gdnkj ugha gksxk ;fn&

(i) og mls vkoafVr fdjk;k eqDr ljdkjh okl nwljs ljdkjh Isod 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)ZldkjH laxBu] ;Fkk] uxjikydk] iksVZV~LV] jk""V~h;d`r

cSad] thou chek fuxe] vkfn jkjk vkoafVr okl esa fuokl djrk@djrH gksA

(iii) mldh iRuh@mlds ifr dks dsUnz ljdkj] jkT; ljdkj] Lo"kkllh yksd midze ;k v)Zljdkjh laxBu] ;Fkk] uxjikfydk] iksVZV~LV vkfn }kjk 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"kkZd 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"kkllh 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 izklr djus okyk vius LokfeRo okys edku esa jgus okyk ljdkjh lsod ls fHkUu 1]069 :0] rd

osru izklr 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 izfrfunsZ"k ugha fd;k tk;sxA 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 vfoHkkfr ifjokj ds LokfeRo okys edku esa jgrk@jgrh gksa ftldk og lgHkkxhnkj

gks] dks edku HkkM+k HkRrk uxjikfydk izkf/kdkjh }kjk ;Fkkfu/kkZfjr ldy HkkVd ewY; dh jkf"kd dh izfrfunsZ"k fd, cxSj fn;k tk;sxA bl izdkj]

,sls vf/kdkjh lsodksa ds ekeys esa] edku HkkM+k HkRrk ds nok ds iz;kstukFkZ uxjikfydk izkf/kdkfj;ksa }kjk fu/kkZfjr HkkVd & ewY; izLrq

djus ds fy, ugha dgk tk;sxA

fVli.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"kkllh 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 nwlls 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.