

(2005) 06 CAL CK 0003

Calcutta High Court

Case No: W.P.S.T. No. 45 of 2003

Association of West Bengal
Secretariat Assistants and
Another

APPELLANT

Vs

The State of West Bengal and
Others

RESPONDENT

Date of Decision: June 15, 2005

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Constitution of India, 1950 - Article 14, 226, 227

Citation: (2006) 3 CALLT 77

Hon'ble Judges: S.P. Talukdar, J; Alope Chakrabarti, J

Bench: Division Bench

Advocate: Sadhan Roy Chowdhury and R. Basu, for the Appellant; Joydip Kar and K. Roy, for the Respondent

Judgement

S.P. Talukdar, J.

The present application under Article 226 of the Constitution of India is directed against the. Judgment dated 6th September, 2002 passed by the West Bengal Administrative Tribunal, hereinafter referred to as "the Tribunal" in O.A. No. 2899 of 1999.

Grievances of the petitioners may briefly be stated as follows:

2. The petitioners approached the Tribunal with the grievance that while fixing the quantum of House Rent Allowance of the Secretariat employees posted at Calcutta, the respondent/State authorities committed discrimination. It was alleged that the State Government employees posted at New Delhi were getting 30% House Rent Allowance and after declaration of Calcutta as "A-1" city, the Secretariat employees should get H.R.A. at the same rate, i.e., 30% H.R.A. It was contended that previously

the Secretariat employees were getting more H.R.A. but, subsequently, the same was brought at par with all the employees of the State Government. It was further claimed that by fixing the quantum of H.R.A. at a flat rate of 15% the Government authorities committed discrimination in treating the Secretariat employees at par with other State Government employees.

3. Initially the maintainability of the application u/s 19 of the Administrative Tribunal Act, 1985 was challenged and the order passed by the Learned Tribunal holding such application as maintainable was further challenged by filing writ application before the High Court. The Hon"ble Division Bench of this Court while disposing of the W.P.S.T. No. 17 of 1999 upheld the order of the Learned Tribunal holding such application as maintainable. Thereafter, upon consideration of the respective stand of the parties, the Learned Tribunal dismissed the application filed by the present petitioners.

4. Being aggrieved by the said order the petitioners filed this application praying setting aside of the same.

5. It appears that the learned Tribunal while disposing the application filed by the present petitioners took into consideration the fact that the H.R.A. offered to the State Government employees posted at New Delhi was more in the nature of a temporary measure and in appreciation of the genuine difficulty in finding out suitable accommodation in the capital city of New Delhi.

6. learned Counsel for the petitioners, Mr. Roy Chowdhury submitted that granting of H.R.A. is more of a ministerial job rather than a policy. learned Counsel for the petitioners argued that even if it is a policy decision it cannot be arbitrary but must be uniform.

7. Mr. Joydip Kar, learned Counsel, appearing for the State authorities submitted that H.R.A. is a creature of a rule. In the facts of the present case it is framed by the State Government, mainly on the recommendation of the Pay Commission.

8. At the time of hearing of the application our attention was invited to Chapter 10 of the Pay Commission recommendation (at Page-92). It deals with H.R.A. It appears that different Associations and Groups of Government employees pleaded before the Pay Commission for uniform H.R.A. irrespective of their place of posting. Some of them asked for increasing the existing rate. It is recorded that the Commission though its members were convinced of the need for the fixation of H.R.A. entitlement on a realistic basis, could not agree to an unanimous recommendation on the issue. It transpires that three separate sets of recommendations were formulated by the members. The Government of West Bengal adopted a uniform rate of 15% of basic pay as H.R.A. for all the categories.

9. Mr. Roy Chowdhury drew attention of the Court to the fact that members of the Higher Judicial Services in West Bengal were also given H.R.A. at the rate given to

the Officers residing in "A-I city. Grievance in this regard seems to be misplaced in the backdrop of the fact that Service Conditions of the members of the Higher Judicial Service in the State of West Bengal were at par with the members of the Indian Administrative Service. As such, there cannot be any comparison between two unequals, ,

10. Mr. Roy Chowdhury contended that granting of H.R.A, cannot be beyond judicial scrutiny and assuming it to be a policy decision, it could very well be challenged on the ground that it is ultra vires.

11. Our attention was drawn to a deny official letter written by the then Chief Minister of West Bengal. Such" letter dated 20th October, 1997 written by Mr. Jyoti Basu addressed to the Hon"ble Prime Minister, Sri I.K Guzral, ventilates concern about the possible adverse implication of unfair classification of Calcutta. Relevant portion of the said letter may be reproduced as follows:

However, I find from the annexure to the Office Memorandum mentioned above that though for the purpose of CCA, Calcutta Urban Agglomeration (UA) has been classified as "A-I yet for the purpose of HRA, the same Calcutta (UA) has been classified as "A" only. This appears to me to be somewhat anomalous.

12. According to Mr. Roy Chowdhury, the relevant Rule gives rise to entitlement and the petitioners may challenge the quantum without even challenging the Rule. He clarified by saying that the petitioners challenged the action based on the Rule.

13. Mr. Roy Chowdhury then referred to the decision in the case of [The State of West Bengal and Others Vs. Ranbindra Nath Sengupta and Others](#), . In the said case it was found that Government employees living in privately rented accommodations or in their own accommodations were entitled to 15% of their pay as HRA subject to ceiling of Rs. 800/-. Such privilege was not however given to the Government employees occupying Government premises as licensee. The Apex Court held that it could not be said to be hostile discrimination.

14. Mr. Roy Chowdhury further referred to the decision in the case of [All India Ex-Emergency Commissioned Officers and Short Commissioned Officers" Welfare Assn. and Another Vs. Union of India \(UOI\) and Another](#), . He sought to be derive support from the contention made before the Apex Court in the said case that the object behind the framing of the Rules being to compensate for the lost opportunity, there is no rational basis in classifying officers in two categories.

15. The facts and circumstances of the said two cases, however, are significantly different from those of the present case.

16. On the other hand, learned Counsel, Mr. Joydip Kar, appearing for the State authorities submitted that HRA is given to the employees following particular Rule which is framed by the State Government. Such a Rule is framed mainly on the basis of recommendation made by the Pay Commission. He submitted that vires of the

said Rule have not been challenged by the petitioners. He categorically submitted that there, cannot be any question of equality when the employers are different. It appears that the present petitioners at the time of hearing of the case before the learned Tribunal opted for deletion of the prayer for declaration of the Rules as ultra vires. Thus, the learned Tribunal was only left with the solitary issue regarding the alleged illegality and impropriety in the matter of grant of 15% HRA of the revised scale pay subject to the maximum of Rs. 2000/-.

17. Mr. Kar emphatically asserted that the equality clause in Article 14 of the Constitution presupposes persons in similarly circumstanced situations. It seems to be the contention of Mr. Kar that there can be no equality amongst unequals and there could always be a reasonable classification. He invited attention of the Court to the decision in the case of Union of India and Ors. v. S. Vijayakumar and and Ors. reported in 1954 (supp 3) SCC 649. He submitted that the employees posted in New Delhi were given HRA at a higher rate with the idea to attract employees .to accept posting at a far distant place. In fact, Mr. Kar relied upon the decision in the case of Reserve Bank of India v. Reserve Bank of India Staff Officers' Association, which was also referred to in connection with the said case. In the case of Reserve Bank of India it was held that "grant of special compensatory allowance or remote locality allowance only to the officers transferred from outside to Gauhati Unit of the Reserve Bank of India, while denying the same to the local officers posted at the Gauhati Unit,, was not regarded as violative of Article 14 of the Constitution.

18. Mr. Kar, learned Counsel, appearing on behalf of the State authorities further submitted that no writ of mandamus can be issued contrary to Rule and in this context he referred to the decision in the case of [Union of India and Another Vs. Kirloskar Pneumatic Company Limited](#), . Relevant extract from the aforesaid decision may be reproduced here below:

Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Articles 226/ 227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the authorities to act contrary to law.

19. Our attention was also drawn by Mr. Kar to the decision in the case of State of West Bengal and Ors. v. Ranbindra Nath Sengupta and and Ors. reported in (1998)4 SCC 227, in support of his contention that the principle of HRA is formulated on the basis of advice by an expert body like the Pay Commission. He contended that that the policy decision is in the domain of the executive authority of the State Government.

So long such policy decision is not arbitrary, capricious and based on no reason thereby offending Article 14 of the Constitution the Court should not out step its limit and tinker with the policy decision of the State Government.

20. In fact, the said case was also referred to by the learned Counsel for the petitioners and as mentioned earlier, the factual backdrop of the said case is entirely different. It. however cannot be denied that the Court in its zeal to administer Justice should not ordinarily encroach into the exclusive domain of the State authority unless there is clear violation of the inherent principle of equality before the law and equal protection of law.

21. George Orwell in his book "Animal Farm" expressed that all are equal but some more equal than others. It was more a voice of despair and cynicism. Our constitution does permit unreasonable classification. But when the classification is based on sound reasons is rational, there can be no scope for any grievance in that regard. Those of the State Government employees who are posted in New Delhi cannot be said to be similarly circumstanced with the members of the petitioner association. Mere fact that both the said two cities have been declared as "A-11 does not place the present petitioners on the same platform with the employees posted at New Delhi. By no stretch of imagination it can be argued that the members of the petitioners organisation deserve to be treated at par with the employees posted at New Delhi in the context of entitlement to H.R.A.

22. It is found that the learned Tribunal dealt with the matter in all its aspects and in the proper perspective. The order under challenge does not seem to suffer from any such impropriety or illegality which calls for or justifies any interference by this Court.

23. Accordingly, the present application under Article 226 of the Constitution being W.P.S.T. No. 45 of 2003 be dismissed on contest. The impugned order dated 6th September, 2002 passed by the learned Tribunal, in O.A. No. 2899 of 1999 stands affirmed.

No order as to costs.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties after due compliance with the legal formalities.

A. Chakrabarti, J. ♦ I agree.