Director, Central Plantation Crops ... vs M. Purushothaman And Ors on 26 July, 1994

Equivalent citations: AIR 1994 SUPREME COURT 2541, 1994 AIR SCW 3586, 1994 SCC (SUPP) 3 282, 1995 (4) SCC(SUPP) 633, 1995 SCC (SUPP) 4 633, 1996 SCC (L&S) 215, (1994) 2 LAB LN 1032, (1994) 4 SERVLR 574, (1996) 32 ATC 160, (1994) 4 SCT 595, 1994 SCC (L&S) 1418

Bench: P.B. Sawant, M.K. Mukherjee

CASE NO.:
Appeal (civil) 885 of 1993

PETITIONER:
DIRECTOR, CENTRAL PLANTATION CROPS RESEARCH INSTITUTE, KESARAGOD AND ORS.

RESPONDENT:
M. PURUSHOTHAMAN AND ORS.

DATE OF JUDGMENT: 26/07/1994

BENCH:
P.B. SAWANT & M.K. MUKHERJEE

JUDGMENT:

JUDGMENT 1994 SUPPL. (2) SCR 267 The following Order of the Court was delivered :

This short question that falls for consideration in this appeal is whether the employees of the appellant-organisation, viz., the Central Plantation Corps. Research Institute are entitled to House Rent Allowance (HRA) although' they are offered official accommodation and they refuse to occupy the same.

The responder-employees are occupying various posts in the appellant- organisation. Orders allotting official quarters they were entitled to, were passed by the appellant-organisation. However, the employees declined to occupy the same for one reason or the other. On their refusal to occupy the quarters, the appellant issued orders denying to them the benefit of HRA which they were till then drawing. The respondent-employees challenged these orders before the High Court, Their writ petitions were subsequently transferred to the Central Administrative Tribunal and the Tribunal by the impugned common decision dated 5.5.1988, held that the employees cannot be compelled to occupy the official quarters and hence on their refusal to occupy the same, they cannot be denied the benefit of the HRA. To arrive at this conclusion the Tribunal has given two reasons. The first is that under the relevant provisions, it is only those employees who had applied for official

accommodation and who refused to occupy the same, are liable to forfeit the benefit of the HRA and not others. The second reason given by the Tribunal is that the HRA is a part of wages and no deduction from the wages can be made merely on account of the refusal to accept the accommodation.

We are unable to agree with either of the said reason. It is obvious that the Tribunal has misread both the relevant provisions governing the entitlement of the accommodation and the HRA as well as the rules which define "pay".

It cannot be disputed and it does not appear to have been disputed before the Tribunal that it is para 4 of the Office Memorandum dated 27.11.1965 of the Government of India, Ministry of Finance which would govern the present case. The relevant portion of the said paragraph reads as follows :

"4. The grant of house rent allowance shall be subject to the following conditions:

(a) (i) To those Government servants who are eligible for Govern-ment accommodation, the allowance will be admissible only if they have applied for such accommodation in accordance with the prescribed procedure, if any, but have not been provided with it, in places where due to availability of surplus Government accommodation, special orders are issued by the Ministry of Works and Housing from time to time making it Obligatory for employees concerned to obtain and furnish 'no accommodation' certificate in respect of government residential accommodation at their place of posting. In all other places no such certificate is necessary.

(ii) Government servants posted in localities where there is at present no residential accommodation in the general pool owned or requisitioned by the Central Government for allot-ment to them, need not apply for government residential accommodation in order to become eligible for house rent allowance. But where Government quarters are available far the staff of specified Departments or for specified categories of staff, the procedure for applying for accommodation will be regulated under the rules of allotment of the Department concerned or of the local office of the Central Public Works Department, as the case may be.

[b] (i) The allowance shall not be admissible to those who occupy accommodation provided by Government or those to whom accommodation has been offered by Government but who have refused it. In the latter case, the allowance will not be admissible for the period for which a Government servant is debarred from further allotment of Government accommodation under the allotment rules applicable to him.

(ii) The house rent allowance drawn by a Government servant, who accepts allotment of Government accommodation, shall be stopped from the date of occupation, or from the eight day after the date of allotment of Government accommodation, whichever, is earlier. In case of refusal of

allotment of Government accommodation, house rent allowance shall cease to be admissible from the date of allotment of Govern-ment accommodation. In case of surrender of Government accommodation, the house rent allowance, if otherwise ad-missible, will be payable from the date of such surrender."

It is clear from the aforesaid provisions that paragraphs 4 [a] (i) and

(ii) -lay down the procedure for making application for accommodation. Paragraph 4 [b] (i) lays down the consequences on refusal to accept the accommodation when offered. There is no doubt that paragraphs 4[a] (i) and

(ii) state that an application has to be made to secure accommodation. However, that does not mean that Government or the organisation such as the appellant - organisation to which the said provisions apply, cannot on their own offer accommodation to the employees. Hence the reason given by the Tribunal that it is only if the employee applies for such accommodation and he refuses to accept the same when offered that he would be disentitled to the HRA, is not correct. It must be remembered in this connection that the Government or the organisation of the kind of the appellant spends huge public funds for constructing quarters for their employees both for the convenience of the management as well as of the employees. The investment thus made in constructing and maintaining the quarters will be a waste if they are to lie unoccupied. The HRA is not a matter of right. It is in lieu of the accommodation not made available to the employees. This being the case, it follows that whenever the accommodation is offered the employees have either to accept it or to forfeit the HRA, The management cannot be saddled with double liability, viz., to construct and maintain the quarters as well as to pay the HRA. This is the rationale of the provisions of paragraph 4 of the said Government Office Memorandum.

It is for this reason again that paragraph 4 [b] (I) provides that the HRA shall not be admissible to those who occupy accommodation provided for them as well as to those to whom accommodation has been offered but who have refused to accept it. The provisions of paragraph 4 [b] (i) are independent of the provisions of paragraph 4 [a] (i) and (ii). Whereas paragraphs 4 [a]

(i) and (ii) speak of procedure to be followed by the employees who are in need of accommodation, paragraph 4 [v] (i) provides for the forfeiture of the HRA even when the accommodation has been offered on its own by the management whether the application for the same has been made or not. There is no distinction made in this provision between those who have applied and those who have not applied for accommodation. Even otherwise, we are of the view that the distinction sought to be made by the Tribunal is on the face of it, irrational, particularly taking into consideration the resources spent on constructing the quarters.

We are also afraid that the Tribunal is not right in including the.HRA in the definition of wages. The Fundamental Rule 9[21] (a) which is applicable to the respondent-employees defines "pay" as follows :

> "9[21] (a) Pay means the amount drawn monthly by a Government servant as [i] the pay, other than special pay granted in view of his ional qualifications, which has been sanctioned for a. post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre; and (ii] overseas pay, special pay and personal pay; and [iii] any other emoluments which may be specially classed as pay by the President."

It is obvious from this definition that HRA is not part of "pay. Further, Fundamental Rule 44 defines "Compensatory Allowance" as follows :

> "F.R. 44. Compensatory allowance. - Subject to the general rule that the amount of compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, the Central Government may grant such allowances to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn."

The HRA would be covered by the definition of Compensatory Allowance, It is compensation in lieu of accommodation. This definition itself further makes it clear that compensatory allowance is not to be used as a source of profit. It is given only to compensate for the amenities which are hot available or provided to the employee. The moment, therefore, the amenities are provided or offered, the employee should cease to be in receipt of the compensation which is given for want of it. We wish the Tribunal had perused the definition of "pay and compensatory allowance" given in the Fundamental Rules before pronouncing that the HRA is a part of the wages or pay and, therefore, cannot be disturbed.

For both these reasons, therefore, we are unable to accept the conclusion of the Tribunal.

Shri Ranjit Kumar, learned counsel appearing for the appellant-organisation pointed out a letter dated 13.8.1986 addressed by the Under Secretary of the Indian Council of Agricultural Research to the appellant Wherein it is stated that the matter was examined and it was held that the HRA should be denied to the employee who refuses to take the allotment made or when offered to him till such time the quarter in question lies Vacant for want of any other taker. This would mean that the HRA would be denied to the employee only for the period the quarter lies vacant consequent upon his refusal. While, therefore, setting aside the impugned order and allowing the appeal, we direct the appellant-organisation to deduct the HRA from the salary of the Respondent-employees only for the period the quarters which were offered to the employees remained vacant. The appeal is allowed accordingly with no Order as to cost.