

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 88 of 1999

Tuesday, this the 7th day of November, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. Karamath, S/o. Ahamed (late),
Electrician, Electrical Sub Division,
Kadamath Island.
2. K.F. Moosa, S/o. Ali Muthage,
Teacher, Junior Basic School, Minicoy
residing at Kafogothi House,
Rammedu Village, Minicoy Island.
3. V.B. Hussain, S/o. Ali,
Teacher, Junior Basic School, Minicoy
residing at Valubigothi House,
Bada Village, Minicoy. ...Applicants

{Through their authorised agent Mr. Mohammed Mudeenge,
S/o. Aboobacker, Tourism Officer, Lakshadweep Office,
Willington Island, Kochi
(Mudingi House, Kudehi Village, Minicoy Island, Lakshadweep)}

[By Advocate Mr. M.R. Rajendran Nair]

Versus

1. The Administrator,
Union Territory of Lakshadweep, Kavarathi.
2. The Director of Education,
Union Territory of Lakshadweep, Kavarathi.
3. The Head Master, Junior Basic School, Minicoy.
4. The Secretary, Pay and Accounts,
Union Territory of Lakshadweep, Kavarathi.
5. Union of India, represented by Secretary
to Government of India,
Ministry of Home Affairs, New Delhi. ...Respondents

[By Advocate Mr. P.R. Ramachandra Menon, ACGSC (rep.)]

The application having been heard on 7th of November, 2000,
the Tribunal on the same day delivered the following:

O R D E R

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Applicants seek to quash A8, to declare that the islanders working in their native islands are entitled to get HRA equal to that of the mainlanders working in islands as well as islanders working in islands other than their native islands with similar duties and responsibilities, and to direct the

respondents to pay uniform HRA to the islanders working in their native islands, mainlanders working in islands and islanders working in islands other than their native islands at the rate of 7.5% of the salary as being paid to the mainlanders working in islands and islanders working in islands other than their native islands.

2. Applicants are islanders working under the Lakshadweep Administration. They are aggrieved by the refusal on the part of the respondents to pay uniform HRA among the employees of the island who are posted in their native island and other islands.

3. Applicants say that there is discrimination for payment of HRA on the basis of place of birth among mainlanders and islanders and the same is unjust and illegal. They also say that there is no basis for classifying the islanders working in their native islands and non-islanders in the matter of payment of HRA.

4. Respondents resist the OA contending that the Ministry of Finance issued O.M. No. 2(33)/91-E.II(B) dated 1-11-1993 and as per the same local recruits of Lakshadweep Islands who are serving in an island different from their native island will be allowed HRA at 'C' class rate only for the period of their posting in an island different from their native island. In the light of the same, it was decided that employees when posted in their native islands may be paid HRA at the rates applicable to the unclassified cities until further orders are issued after getting further clarification from the Ministry of Finance. In the impugned order A8 it is stated that on careful examination it was found not possible to give HRA to the islanders working in their native islands at the rate applicable to 'C' class cities and they are eligible to get HRA

only at the rate admissible for unclassified cities since Lakshadweep has been categorised as unclassified on the basis of population. No discrimination is shown to the applicants on the basis of their place of birth.

5. The learned counsel appearing for the applicants vehemently argued that refusal to grant 7.5% of the pay as HRA to the incumbents like the applicants who are posted in their native island is offending Article 16 of the Constitution of India. Article 16 (2) of the Constitution says that no citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. According to the learned counsel for applicants, denial of HRA at the rate of 7.5% of the pay to the applicants is based on the place of birth. A8, the impugned order, says that all those who are working in their native islands are not eligible to get 7.5% of the pay as HRA or the HRA admissible at 'C' class cities. So, it is very much clear that the distinction is drawn here only on the basis of the place of working and not on the basis of the place of birth. The right guaranteed under Article 16 (2) of the Constitution does not extend to the place of work, but only to the place of birth. Even if it is on the basis of place of birth, in order to offend Article 16 (2) it should be based only on the basis of place of birth. So, here the position is clear that the impugned order is not based on the place of birth, but only on the basis of the place of work. Therefore, it cannot be said that it offends Article 16 (2) of the Constitution of India.

6. A1 (or R-II) is dated 1-11-1993. It is an Office Memorandum issued by the Government of India, Ministry of Finance. It clearly says that the Central Government employees posted in the Union Territory of Lakshadweep who are mainland

recruits, deputationists and those local recruits who are serving in an island different from their island, be allowed HRA at 'C' class rates and the local recruits may be allowed HRA at 'C' class rates only for the period of their posting in an island different from their native island. So, A1 is also on the same footing of A8. There is no attack against A1. Even if A8 is quashed, still A1 will be there in force. As long as A1 is in force, islanders working in their native islands will not be entitled to get HRA at 'C' class rates. Here, there is no denial of HRA to islanders posted in their native islands. They are given HRA admissible for unclassified city as Lakshadweep is unclassified on population basis. HRA paid as per the rules prescribed by the authorities concerned. Reference is made in A8 to A1 also. So, the position is that it will not make any difference even if A8 is quashed, since A1 is not under challenge and the same will continue to hold the field.

7. The learned counsel for applicants submitted that there may be a direction to the respondents not to recover the HRA paid in excess of the amount due to the persons working in an unclassified city. There is no relief sought in this OA for giving such a direction. A prayer which is not sought cannot be granted.

8. Accordingly, the Original Application is dismissed.

Tuesday, this the 7th day of November, 2000



A.M. SIVADAS
JUDICIAL MEMBER

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List of Annexures referred to in this Order:

1. A1 True copy of the OM dated 1-11-1993 No. 2(33)/91-E.II(B) issued by the Government of India, Ministry of Finance, New Delhi.

2. A8 True copy of the letter dated 3-11-98, No. U-14026/2/97-ANL issued by the Deputy Secretary (ANL), Government of India, Ministry of Home Affairs, New Delhi to the 1st respondent.