

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. . . : 106 of 1999.

Dated this Monday, the 16th day of October, 2000.

Smt. N. N. Sawant & Another, Applicants.

Shri M. I. Sethna alongwith Advocate for the
Shri V. D. Vadhavkar, applicants.

VERSUS

Union of India & Another, Respondents.

Shri R. R. Shetty for Advocate for
Shri R. K. Shetty, Respondents.

CORAM : Hon'ble Shri Justice, Ashok Agarwal, Chairman.

Hon'ble Shri B. N. Bahadur, Member (A).

(i) To be referred to the Reporter or not ?

(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?

(iii) Library.


(B. N. BAHADUR)
MEMBER (A)

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CORAM : *Hon'ble Shri Justice Ashok Agarwal, Chairman.*

Hon'ble Shri B. N. Bahadur, Member (A).

1. *Smt. N. N. Sawant.*

2. *Smt. Sushma Rahate.*

*Both Upper Division Clerks,
Employees' P.F. Organisation,
Bandra, Mumbai.* ... *Applicants.*

*(By Advocate Shri M. I. Sethna alongwith
Shri V. D. Vadhavkar)*

VERSUS

1. *Central Provident Fund
Commissioner,
HUDCO, Vishala,
14, Bhikaji, Cama Place,
New Delhi - 110 066.*

2. *Regional P.F. Commissioner (I),
Bandra, Mumbai - 400 051.* ... *Respondents.*

*(By Advocate Shri R. R. Shetty for
Shri R. K. Shetty).*

OPEN COURT ORDER

PER : *Shri B. N. Bahadur, Member (A).*

The Applicants in this case, Smt. N. N. Sawant and Smt. Sushma Rahate, are employees of the Employees' Provident Fund Organisation (E.P.F.), Bandra, Mumbai, and are before us seeking the relief, in substance, to be declared as entitled to draw House Rent Allowance inspite of the fact that accomodation/quarters have been allotted to their husbands by their employers, namely Reserve Bank of India (R.B.I.).



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2. The case made out by the Applicants is, that the Applicants are employed with an organisation which is not the Central Government or an organisation of the Central Government and thus, they would not be governed by the rules which prohibit Central Government employees from drawing H.R.A. in a situation like the ones obtaining in the case of Applicants. It is also contended that the Reserve Bank of India is also not a Central Government organisation. The rules concerning the grant of H.R.A. of the Government have been referred to, and described in the O.A., and factual details are also expounded in the O.A., which are not being repeated here.

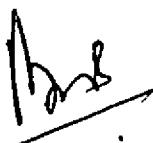
3. In the written statement filed in reply, the Respondents have resisted the claims of the Applicants, and have also quoted the rules which govern such cases in the Central Government. Copies of these rules are available on record. One of them relates to the condition of drawal of House Rent Allowance. Para 5 (c) of this conditions is important, and will be considered in the discussions ahead. The Respondents aver that the Rules disentitle certain classes of Government servants from H.R.A., and that, as per rules governing the present Applicants, they will also stand disentitled, since the rules of Government in this regard have been consciously adopted by the Provident Fund Organisation. The Employees' Provident Fund (Staff and Conditions of Service) Regulations, 1962, were produced by the Learned Counsel for Respondents.

4. The Learned Counsel for the Applicants, Shri M. I. Sethna, who appeared alongwith Shri V. D. Vadhavkar, argued the case in detail and first made the point that the Applicants were not Government servants. They were employees of the Employees'



Provident Fund Organisation, which was clearly an autonomous body and would not come within the definition of the illustrative example given in Condition 5 (c) of the Rules referred to above. The Learned Counsel for the Applicants specifically referred to para 6 of the Memorandum (Page 28) and also referred to a judgement of the Patna High Court (Page 33) to exemplify his claim to the point that employees such as the Applicants were not Government employees. Attention was also drawn to a reference made in the letter at page 34 which states that the E.P.F. organisation was not covered under the terms of reference of the Fifth Pay Commission.

5. Learned Counsel for the Applicants further argued the case with reference to the conditions referred to at para 5 (c) making the point that the Reserve Bank of India is an entity in itself, and cannot be included in the general illustrative list, which is included in para 5 (c) (ii) and 5 (c)(iii). Another point stressed by the Learned Counsel was that in para 5 (c) (iii) the omission of the word 'Nationalised Bank' was a deliberate and intentional act and thus a differentiation was sought to be drawn between an employee residing with parents, as against an employee residing with an husband/wife. Another point of support taken by the Learned Counsel for the Applicant was from the Judgement of this Bench of the Tribunal in the case of Smt. Sharda Gajanan Rajarshi V/s. Union of India 1995 (1) ATJ 195. This judgement was referred to at some length to draw the point that the ratio decided in the case of Bombay University was relevant in the case of the present Applicants also.



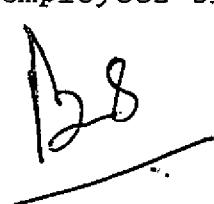
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6. Arguing the case on behalf of the Respondents, the Learned Counsel for the Respondents, Shri R. R. Shetty for Shri R. K. Shetty, took us back to the rules and made the salient point that the list of Organisation cited at para 5 (c)(ii) & (iii) was only illustrative in nature and that this would certainly include the Reserve Bank of India. The Learned Counsel further argued that the omission of the word 'Nationalised Bank' cannot be read into with meaning which was not intended, as has been argued by the Learned Counsel for the Applicants.

7. Learned Counsel for the Respondents sought to distinguish the judgement cited in the case of Smt. Sharda Rajarshi by drawing reference to two judgements of the Supreme Court, the first relating to Raipur Development Authority V/s. Anupam Sahkari Girha Nirman Samiti [2000 (3) SUPREME 37]. He referred to the ratio decided that when two interpretations were possible, one which subserves the intention of the legislature is to be adopted. Para 14 of this judgement was dealt upon at some length by the Learned Counsel to expound this point. The other ratio was sought to be derived from the case of Union of India & Others V/s. Rekha Majhi [2000 (3) SUPREME 299] to make the point that it was not the intention of Government to give separate benefits to husband and wife. Admittedly, the case refers to a case of a family pension available to the widow with specific reference to the point regarding Dearness Relief decided by the Hon. Supreme Court.

8. In the first instance, we note that the Applicants are employees of the Employees' Provident Fund Organisation, and

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cannot be said to be employees of the Central Government. We will therefore decide on their status in this regard with reference to the rules applicable to them. The Employees' Provident Fund (Staff and Conditions of Service) Regulations, 1962, state in para 9 as follows :

"9. PAY, LEAVE, PROVIDENT FUND AND AGE OF COMPULSORY RETIREMENT :~ (1) The scales of pay attached to the post under the Organisation shall be as set out in the relevant recruitment rules/regulations.

(2) The regulations relating to the grant of leave, benefit of pension and gratuity or contributory provident fund to the employees and the age at which they shall be compulsorily retired from service, shall be as set out in the Forth Schedule.

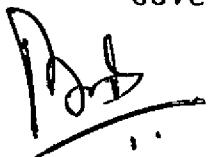
(3) The fixation of pay, grant of increments and connected matters shall, in the case of an employee, be governed by the provisions contained in the Fundamental Rules and the Supplementary Rules, framed thereunder, as applicable, from time to time, to employees of the Central Government. The initial pay of employees appointed on the recommendation of the Commission will, however, be as recommended by the Commission.

(4) Notwithstanding the provisions of Sub-regulation (3)

(a) the initial pay of a Government servant, permanent or temporary, on first appointment in the organisation, on the recommendation of the Commissioner otherwise, shall not be less than what would have been admissible to him if he was appointed to a post in a similar scale of pay under the Central Government.

(b) the service, including the broken period of service, rendered by a temporary Government servant under the Central Government in the time scale of pay similar to that to which he is appointed in the organisation shall be counted for purposes of increment to the extent that such service is counted for increment under the Central Government in such cases provided that he is appointed in the organisation without any break after the termination of his service under the Central Government.

(5) The employees will be entitled to such allowances including traveling allowance and concessions as may be admissible from time to time to corresponding categories of Central Government servants."



Now a reading of these rules will show that according to sub-clause (3) of para 9, the Organisation has adopted the Fundamental Rules and Supplementary Rules of the Central Government in generality, and have made, in it, an exception in regard to the initial pay offered. It will also be relevant to read sub-clause (4) where certain other exceptions are sought to be made but no reference is made in this regard to House Rent Allowance. Thus, in the first instance, it has to be concluded that rules and regulations regarding House Rent Allowance will be the same as applicable to employees of the Central Government. If an exception were to be made in this regard, it could have been included like the point relating to initial salary and since Government regulations thus become applicable by adoption, it will follow that Applicants would not be entitled to separate H.R.A. as per rules.

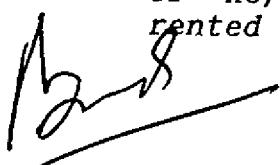
9. We will take a close look at Rule 5 (c) of the Conditions of Drawal of House Rent Allowance depended upon in arguments on both sides. We will need to examine whether the Reserve Bank of India will fall into the illustrative list given in Rule 5 (c)(ii) and 5(c)(iii). This Rule reads as under.

5.(c) A Government servant shall not be entitled to house rent allowance if -

(i) he shares Government accomodation allotted rent-free to another Government servant; or

(ii) he/she resides in accomodation allotted to his/her parents, son/daughter by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port Trust, Nationalised Banks, Life Insurance Corporation of India, etc.

(iii) his wife/her husband has been allotted accomodation at the same station by the Central Government, State Government, an autonomous public undertaking or semi-Government organisation such as Municipality, Port Trust, etc. whether he/she resides in that accomodation or he/she resides separately in accomodation rented by him/her."



It is clear that the lists are illustrative in nature and obviously, no attempts have been made to exhaustively cite the large number of such organisation of Central Government which exists across length and breadth of the country. In sub para (ii) there is a clear mention of "Nationalised Bank and Life Insurance Corporation", which have been omitted in sub-para (iii). We feel that too much meaning is being read into this omission by Applicants. In any case, the argument made by the Learned Counsel for the Respondents that Reserve Bank of India itself is not a Nationalised Bank, begs the question. We cannot give too much importance or relevance in any case to the omission of the words 'Nationalised Bank/L.I.C.' or take such omission to mean that R.B.I. is specifically to be excluded in cases where employees of E.P.F. organisation stay with their husbands/wives.

10. It is true that in the case of Smt. Sharda Rajarshi, the applicant therein had been provided with the kind of relief prayed here but the main point that came to be for decision in that case is, whether the Bombay University would fall in the same category as the organisations/institutions mentioned in clause (iii). It was held that provisions of Section 5 (c)(iii) could not restrict the right to H.R.A. where the husband and wife belong to an Organisation such as Bombay University. The question posed in para 6 in the judgement in this case was whether the expression "semi-Government Organisation" is restricted only to the categories such as Municipality or Port Trust and would not cover a University. They have indeed come to the conclusion that the Bombay University would not be covered. We are, however, looking at a specific case of an Organisation like the Employees' Provident Fund Organisation, where the



Applicants are employed. As per the Employees' Provident Fund (Staff and Conditions of Service) Regulations, 1962, referred to above, there is a conscious decision of the Organisation to adopt the rules applicable to the Government in this regard. An exception has been made with regard to the starting salary but it can clearly from the reading of the Memorandum be concluded that in regard to H.R.A., Government rules apply. Thus, their employees cannot run away from the applicability of these rules and, therefore, the judgement in the case of Smt. Sharda Rajarshi will have to be distinguished.

11. The E.P.F. Organisation can clearly be termed to be an Autonomous Public Body Undertaking within the meaning of both 5 (c)(ii) and 5(c)(iii). This is clear from the background of the facts and circumstances of the case. The ratio cited by the Learned Counsel for the Respondents in the cases of two decisions by the Supreme Court (para 7) are also relevant and there is strength in the argument of the Learned Counsel, Shri R.R. Shetty regarding their applicability to the present case.

12. Another point that remains for our consideration is regarding the recovery ordered in respect of the H.R.A. already paid to both the Applicants. As per the law settled by the Supreme Court in this regard, recovery cannot be ordered even in respect of amounts erroneously paid. The Learned Counsel for the Respondents made a point in this regard that whereas this would be true generally, this would not hold good in the case of Applicant No. 1. hold good in view of what has been stated in para 12 of the written statement of Respondents. Learned Counsel for Respondents tried to make the point that the Applicant No. 1

had given false information to the Department, as described in paragraph 12, which reads as under :

"12. With reference to para 4.9 of the original application the Respondents deny the contents thereof and submit that the applicant No. 1 had informed the Respondents that she had changed her address from Chembur to Andheri and given her address as Bhuta Vasantiben Bhanumati Chawl, Jijamata Marg, Andheri (East), Mumbai - 400 093. Copy of the said intimation letter dated 22.01.1996 is enclosed herewith and marked as Exhibit R-3. Whereas as per her E.L. application thereafter she has indicated her address as Reserve Bank of India Colony, Chembur itself. During several instances she has avoided giving her residential address as Reserve Bank of India Colony, Chembur. This behaviour on the part of the applicant clearly shows that she was well aware that she was residing in a accommodation, the address whereof she did not wanted to divulge."

In this regard, the Learned Counsel for the Applicant resisted this strongly by pointing out to the facts in para 4.2 of the O.A. He argued that right at the time of filing the forms on appointment, they had disclosed all the fact at the initial stage of their employment and all these facts had been placed before the Employees' Provident Fund Organisation.

13. We have considered the arguments made by the Learned Counsel on this point, as also the records pointed out and cannot come to the conclusion that there is any malafide intention on the part of the Applicant No. 1 or any other default as would exclude her from the benefit of the settled law in this regard. It is, therefore, ordered that no recovery of the H.R.A. already paid to the applicants ^{150/-} shall be made. Any amounts recovered shall be refunded to applicants.

14. Subject to the orders made in para 13 above, the O.A. is hereby dismissed. No order as to costs.

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

Ashok Agarwal
(ASHOK AGARWAL)
CHAIRMAN.

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