Dy. Director Vs. Manoharan

Dy. Director Vs. Manoharan

SooperKanoon Citation : sooperkanoon.com/722151

Court : Kerala

Decided On : Feb-14-2005

Reported in : 2005(2)KLT641

Judge : M. Ramachandran and; S. Siri Jagan, JJ.

Acts : Constitution of India - Article 226

Appeal No. : O.P. No. 3663 of 2003

Appellant : Dy. Director

Respondent : Manoharan

Advocate for Def. : G. Sasidharan,; Chempazhanthiyil,; S. Vishnu,;

Advocate for Pet/Ap. : John Varghese, S.C.G.S.C.

Disposition : Petition allowed

Judgement :

M. Ramachandran, J.

1. The order passed by the Central Administrative Tribunal, Ernakulam Bench in O.A.No. 1007/2001 has been subjected to challenge by the respondents including the Chief Post Master General, Kerala Circle, Thiruvananthapuram. The direction of the Tribunal was that the applicant (the first respondent herein) to be paid the

House Rent Allowance ('HRA' for short) from April 1996 onwards. The Tribunal had held that this was because he had been residing separately from his wife not on his violation but on account of enstrangement and since he was prevented from sharing accommodation with his wife in the quarter allotted to her, he was constrained to have a separate establishment and hence could not have been denied the benefit of HRA.

2. A Central Government Employee is entitled to the benefit of HRA. However, in certain circumstances, he becomes ineligible to claim such benefit. R.5(c)(iii) of the H.R.A. Rules deals with such situation, which reads as follows:--

'(c) A Government servant shall not be entitled to HRA if, his wife/her husband has been allotted accommodation at the same station by the Central Government, State Government etc. whether he/she resides in that accommodation or he/she resides separately in accommodation rented by him/her.'

3. The applicant had a case that he was having an unhappy married life from 1992 onwards. He was getting HRA, but as his wife had been allotted a quarter, the benefits were stopped and steps were taken to recover the amount of HRA he had drawn. At that time the applicant had approached the Tribunal and by an interim order in O.A.No.759/1993 such proceeding were got stayed. However, O.A.No. 759/1993 was dismissed, reserving the right of the applicant to move afresh after the judgment of the Family Court. It is submitted that on the basis of a joint statement filed between the husband and wife, pointing out that they were living separately from April 1996, (in O.P.(HMA) 160/1996) by the order dated 29.2.2000 the Family Court had dissolved the marriage between the applicant and her wife.

4. Thereupon, the petitioner had put up a claim that he will be entitled to the benefit of HRA from first April 1996 since the Court had recognized that he and his wife were living separately. In the impugned order viz., Ext.P3 dated 3.10.2002 the Tribunal held that there may be exception to the general Rule. The Tribunal thereby held that it was a case where the applicant was constrained to have his own accommodation and perhaps R.5c(iii) did not take notice of such situation and therefore the claim for HRA was sustainable. Thereby financial liability has been imposed on the employer.

5. Mr. John Varghese, learned Senior Central Government Standing Counsel submits that the decision of the Tribunal is against the text of the statute. Rule provides that as long as a spouse was having a residential quarters allotted, either of them cannot claim HRA for whatever reasons. He also submits that the mere fact that a petition for divorce was pending between them will not entitle the applicant to claim HRA.

6. Mr. Vishnu, appearing for the first respondent, however, submits the Tribunal had adverted to all the contentions which had been presented before it and had thereupon come to a fair decision. Though the prayer for declaration of R.5c(iii) as unconstitutional had been rejected, nevertheless, the Tribunal was competent enough to interpret the Rule and this Court normally will not interfere in such orders in proceedings under Art. 226 of the Constitution of India. He submits that HRA is an admissible benefit, and when there was definite pleadings and evidence put forward to show that this was not being paid inspite of separate living, the Tribunal was expected to interfere. The applicant was expending money for his accommodation, which could not have been overlooked.

7. However, it is difficult to accept the plea that has been raised by the respondent-claimant. HRA is a statutory right, and can be subjected to restrictions which are reasonable. If we accept the contentions of the 1st respondent as endorsed by the Tribunal, it may be possible for any spouse, to put up a plea that because of strained relation between them, she/he was constrained to go for separate accommodation and notwithstanding the presence of the said Rule, it could have been permissible for them to claim HRA.

8. So long as the provision is there regulating the drawing of HRA, we have to see that it has application in full force with the restrictions prescribed. The employee was aware of his predicament, created by the Rule, but the challenge about its constitutionality stands repelled. It has become final.

9. Justice or equity could be guiding factors for rendering a decision, but the result should not offend the test and text of law. Personal convictions regarding justice and fairness cannot form the basis of a judgment, especially when it results in State's largesse being distributed. In this back ground we have to hold that the

order of the Tribunal directing the petitioners herein to pay HRA to the 1st respondent is one to be interfered with. Accordingly the original petition is allowed and Ext.P3 order of the Tribunal is quashed. No order as to costs.