

CASE NO.:
Appeal (civil) 7586-87 of 2002

PETITIONER:
P. S. E. B., Patiala & Anr.

RESPONDENT:
Sudarshan Parshad & Ors.

DATE OF JUDGMENT: 18/05/2006

BENCH:
K. G. Balakrishnan & R. V. Raveendran

JUDGMENT:
J U D G M E N T
WITH

CA Nos. 7588-89/2002, 7590-91/2002 and 7592-93/2002

RAVEENDRAN, J.

These appeals are filed against the judgments of the Punjab & Haryana High Court in the following cases :

S.No.

Civil Appeal
No.
Case No. before
High Court
Date of
Judgment of
High Court

i)
7586-87/2002
CWP 12558/1995
14.5.1998
ii)
7588-89/2002
CWP 12557/1995
14.5.1998
iii)
7590-91/2002
CWP 12556/1995
14.5.1998
iv)
7592-93/2002
CWP 13158/1995
14.5.1998

These appeals involve a common question, as to protection of higher House Rent Allowance drawn upto 31.8.1988 by the employees of Punjab State Electricity Board, after the revision of such allowance with effect from 1.9.1988.

2. The appellant is the Punjab State Electricity Board (hereinafter referred to as 'the Board'). The respondents are/were the employees of the Board. At the relevant point of time, the Respondents, in these appeals, were posted in the

towns of Doraha and Payal situated near Ludhiana. Upto 31.8.1988, the respondents were being paid HRA as applicable to Ludhiana city (class 'A' city) in view of the proximity of those towns (Doraha and Payal) to Ludhiana, as per Board's policy that employees posted in places which were within a radius of 8 km from the periphery of a Municipal Corporation were to be paid the same HRA as applicable to those employed in places within such Municipal Corporation limits.

3. The State Government revised the rates of HRA vide circular dated 30.8.1988, implementing the recommendations of the Third Pay Commission. The Board adopted the revised rates of HRA introduced by the State Government. By Order No.142/FIN.PRC-1988 (Finance Circular No. 11/89) dated 7.3.1989, it classified the cities and towns in Punjab into four classes [Class A, Class B, Class C and Class D] and revised the rates of house rent allowance for various pay ranges admissible in different classes of cities/towns. We extract below the relevant portion of the said order dated 7.3.1989 :-

"(ii) The rates of house rent allowances for various pay ranges admissible in different classes of cities/towns shall be as under :

Pay Range
Class 'A'
City
Class 'B'
City
Class 'C'
City
Class 'D'
Town

Rs.
Rs.
Rs.
Rs.
750-1249
200
150
100
75
1250-1749
300
225
150
100
1750-2249
400
300
200
150
2250-2749
500
375
250
175
2750-3249
600
450
300
225
3250-3749
700

525
350
250
3750-4249
800
600
400
300
4250-4749
900
675
450
325
4750-5249
1000
750
500
375
5250
onwards
1000
750
500
375

The amount of house rent allowance being drawn under the existing orders by the employees at higher rates than those specified above shall be protected till their rate of house rent allowance gets adjusted in their revised rates.

(iii) The house rent allowance shall no longer be admissible at the places falling within 8 kms radius of the municipal/outer limits of the classified cities/downs, save in those cases where house rent allowance is admissible at the place of posting itself.

(iv) The eligibility of house rent allowance of an employee shall be determined with reference to the place of posting of the employee.

The other existing terms and conditions regarding the grant of house rent allowance shall continue to be in force.

4. By circular dated 10.5.1989, the Board ordered that its employees who are entitled to rent free accommodation, when not provided or allotted with such accommodation, shall be allowed 5% of the basic pay in addition to the normal HRA admissible at the place of posting. By another circular dated 10.5.1989, clause (iii) in the order dated 7.3.1989 was substituted with effect from 1.9.1988 to the effect that house rent allowance of the employees is also admissible to the places falling within 8 km radius of the periphery-municipal/outer limits of the classified cities/downs.

5. In view of different interpretations of the HRA orders by different offices, the State Government issued a clarificatory Circular dated 19.9.1990 (adopted by the Board by Finance Circular No. 25/1992 dated 29.5.1992), relevant portions of which are extracted below :

"a) Government employees entitled to rent free accommodation when not provided/allotted such accommodation shall be allowed payment equal to the house rent charged by the Government from the employees

for Government accommodation i.e. 5% of the basic pay in addition to the normal house rent allowance, if admissible at the place of posting. This implies that the employees posted at the place in the belt of 16 kms. from the International Border who are entitled to rent free accommodation as also other employees who are otherwise entitled to rent free accommodation will get 5% of the basic pay in addition to the house rent allowance if the place of posting of the employees falls, in Class A, Class B, Class C, and Class D Cities, as the case may be in accordance with the instructions contained in the Department of Finance letter No. 10/77/88/FPI/8014 dated 30th Aug. 1988. It is made clear that the amount of house rent allowance of First class cities admissible before 1.9.1988, to the employees posted in the belt of 16 kms. from the International Border is not covered within the protection of the House Rent Allowance, as this amount of House Rent Allowance was admissible in lieu of rent free accommodation only.

b) In the rural area, house rent is not admissible to the Government employees who, prior to 1.9.1988, were entitled to house rent allowance of first class cities or second class cities, as the case may be. The Govt. employees posted in the rural areas who are entitled to rent free accommodation when not provided such accommodation are entitled to 5% of the basic pay, in addition to rural area allowance and nothing more. In view of this position, the employee posted in rural area, who, prior to 1.9.1988, were drawing house rent allowance in accordance with the earlier instructions in lieu of rent free accommodation are not entitled to be given any protection of amount of house rent allowance which they were claiming previously."

6. Some of employees of the Board filed a writ petition before the Punjab and Haryana High Court alleging that they were not being extended the benefit of protection of higher HRA drawn upto 31.8.1988, granted under the Circular dated 7.3.1989 and seeking a direction to pay the protected (higher) HRA as drawn by them as on 31.8.1988. The said writ petition (W.P. No. 879/1992 \026 Beant Singh & Ors. Vs. Punjab State Electricity Board) was disposed of by order dated 23.7.1992. We extract below the relevant portion of the said order : "The language of the above provision is very clear. All these employees who are working at places falling within 8 kms radius of the periphery of the Municipality of the classified cities and towns are entitled to house rent allowance.

The grievance of the petitioners is that instead of calculating the distance from the periphery or outer limits of the classified cities or towns, the distance has been calculated from Octroi Post and consequently, though the employees were eligible for the House Rent Allowance, they were denied of the benefit. In support of his submission, the learned counsel relied upon annexure R-4 produced by the respondents which is a certificate issued by the Deputy Commissioner, Ludhiana. It is seen from the said annexure that the Deputy Commissioner has calculated the distance from the Octroi Post and has specified the distance from the Octroi Post concerned.

The learned counsel for the Board submitted that the octroi posts are generally situated on the periphery of the town

concerned, therefore, the distance calculated from that point is correct. The learned counsel for the petitioners, however, contended that the octroi posts in many cities are situated in the middle of the town or cities, as the case may be, and therefore, in accordance with the order dated 10th May, 1989, the distance is to be calculated only from the periphery of the classified cities or the town.

The question as to whether the octroi posts itself are located in periphery or not, is a matter to be got verified physically. However, it should be stated if the periphery of the classified town or cities is beyond the octroi posts then the distance has to be calculated from the periphery and not from the octroi posts. In the result, we allow the petitions and make the following order :-

A direction shall issue to the respondent-board to calculate the distance of each of the place where the employees working, from the periphery of the classified cities or towns and then on that basis to decide as to whether the concerned employees are entitled to the House Rent Allowance.

After ascertaining the distance, if all or any of the petitioners are entitled to the payment of the House Rent Allowance, it shall be paid to each of the petitioners and the arrears payable from the date of entitlement shall also be paid. Amount already paid in pursuance of the interim order shall be adjusted. The time for compliance is six months."

7. In pursuance of a query from the Board, it would appear that Deputy Commissioner-cum-Collector, Ludhiana, issued a certificate dated 29.3.1993 to the Board certifying that the distance of Doraha and Payal from the outer periphery of Ludhiana was 10 and 18 kms respectively. As they were beyond 8 km from Ludhiana, the Board was of the view that the HRA applicable to Ludhiana (class 'A' city) could not be paid to the employees working at Doraha and Payal, and that as the said two towns were shown as class 'D' towns in the order dated 7.3.1989, the employees of Board posted at Doraha and Payal will be entitled to lesser rate of HRA applicable to class 'D' towns.

8. Some employees again approached the High Court in W.P. No. 14529 and 14920 of 1994 seeking protection of higher HRA. The High Court disposed of the writ petitions, permitting the respondents herein to file representation/s, and to treat the writ petition itself as the representation, if no separate representation was filed, and to dispose of the claims by a speaking order. The High Court also directed that till such orders were made, deduction of HRA shall remain stayed and no recovery shall be made from the employees. It further directed that if the representations were decided against the affected employees, the amount drawn on the basis of the said orders shall be recoverable in future.

9. The Board, accordingly, considered the representations of the Respondents and rejected the same by order dated 23.6.1995 holding as follows :
"It has been found that the case of the petitioners for allowing protection of the House Rent Allowance drawn by them prior to 1.9.1988 is not covered under the above instructions, as their station postings do not fall within 8

kms radius of the periphery of Municipal Corporation, Ludhiana. So, the claim of the petitioners for allowing protection of the same allowance is not tenable, and the representation is disposed of accordingly."

10. The respondents herein challenged the said order dated 23.6.1995 in several writ petitions with a further prayer that the HRA that was being paid to them up to 31.8.1988, should be protected. The said writ petitions were allowed by the impugned orders dated 14.5.1998 with a direction that the HRA that was admissible to respondents prior to 31.8.1988 shall be protected. The High Court followed the decision of this Court in Mohinder Singh v. State of Punjab [SLP (c) No.9149 of 1992 decided on 21.4.1995], in allowing the writ petitions. The said orders are challenged by the Board in these appeals by special leave.

11. The appellant contends that though earlier Doraha and Payal had been classified as category 'A' for the purpose of admissibility of HRA, having regard to their proximity to Ludhiana, after the revision by circular dated 7.3.1989, payment of HRA at the higher rates applicable to Ludhiana could not be continued, as both Doraha and Payal fell under category 'D' towns, with effect from 1.9.1988. According to appellants, the respondents are not entitled for the higher HRA which was being paid till 31.8.1988, for the following three reasons :

(i) Doraha and Payal were situated at a distance of 10 kms and 18 kms from the periphery of Ludhiana and therefore, the benefit which was earlier being given on the assumption that they fell within a radius of 8 kms of periphery of Ludhiana, could not be continued.

(ii) Even assuming that the two towns (Doraha and Payal) were situated within a distance of 8 kms from the periphery of Ludhiana, as Doraha and Payal were separately classified as category 'D' towns under the order dated 7.3.1989, their proximity to Ludhiana became irrelevant.

(iii) The protection of HRA was granted only with reference to the cities/towns which were already specified for purposes of HRA prior to the circular dated 7.3.1989; and as only the cities mentioned in classes 'A' and 'B' under the circular dated 7.3.1989 were earlier recognized as cities to which HRA was applicable, the protection was available only in regard to those cities which fell under classes 'A' and 'B' under the order dated 7.3.1989 and not to other cities/towns which were newly included in classes 'C' and 'D' under the order dated 7.3.1989.

12. The question whether Doraha and Payal are situated within a distance of 8 kms within the periphery of Ludhiana (as contended by Respondents) or beyond 8 kms from Ludhiana (as contended by Appellants) is a disputed question of fact. If they are situated within 8 kms of periphery of Ludhiana, then there is no doubt that HRA applicable to Ludhiana city would apply to Doraha and Payal in view of the substitution of clause (iii) of the circular dated 7.3.1989 by circular dated 10.5.1989. But it may not be necessary to examine this disputed question of fact. For the purposes of these appeals, we may assume that the towns of Doraha and Payal are situated beyond 8 kms from Ludhiana city as contended by the appellant and therefore, the HRA is admissible only at the rates applicable to class 'D' towns and

not any higher HRA. But even then, in view of clause (ii) of the order dated 7.3.1989 which protects the HRA at higher rates already being drawn upto 31.8.1988, under the existing orders, such higher HRA stands protected, till the rate of HRA gets adjusted in their revised rates. Therefore, even if the rate of HRA payable to employees at Dohara and Payal, is lowest as the said towns fall under class 'D' under the order dated 7.3.1989, having regard to the fact the respondents working in those towns were being paid a higher HRA prior to 1.9.1988, they would be entitled to the protection of such higher rate of HRA. Protection of higher HRA under clause (ii) of the order dated 7.3.1989 was recognized and accepted by this Court in Mohinder Singh vs. State of Punjab [CA No. 5124/1995] decided on 21.4.1995. We extract below the short order passed in the said case :

"Leave granted.

These appeals impugn a common judgment and order of the High Court of Punjab and Haryana. The only question urged in these appeals is in relation to the house rent allowance (H.R.A.) payable by the State of Punjab to its employees classified in the A, B, C, D categories of a circular dated 30th August, 1998. The rates of H.R.A. were thereby revised. A proviso stated that the HRA being drawn by employees at rates higher than those specified in the circular "shall be protected, till their rate of HRA gets adjusted in these revised rates". It is not in dispute that this proviso protects the HRA. that is being drawn if it is at a rate higher than that prescribed by the circular. The protection enures until the rate specified in the circular is enhanced to a rate higher than that presently drawn. In view of this undisputed position, the appeals are allowed and the judgment and order of the High Court is set aside to the extent aforesaid. The State Government shall give such protection to its appellant employees."

13. The decision in Mohinder Singh would squarely apply to the facts of this case. Clause (ii) of the Order dated 7.3.1989 clearly protects the higher HRA drawn by the employees of the Board upto 31.8.1988. Neither the clarificatory circular dated 19.9.1990 of the State Government (adopted by the Board by circular dated 29.5.1992), nor clause (iii) of the circular dated 7.3.1989 as substituted by circular dated 10.5.1989, nor the fact that Doraha and Payal were recognized as class 'D' towns under the circular dated 7.3.1989, will affect the applicability of the protection clause.

14. We, therefore, find no reason to interfere with the impugned orders. The appeals are, therefore, dismissed.