

State of Andhra Pradesh

Vs

S. Saibabu and Others

Civil Appeal No. 3943 of 1987

(Ranganath Misra, G. L. Oza JJ)

11.12.1987

JUDGMENT

VENKATACHALIAH, J. –

1. Appellant-State of Andhra Pradesh - seeks special leave under Article 136 to appeal from the order, dated September 24, 1982 of the Andhra Pradesh Administrative Tribunal, Hyderabad in R.P. 1097 of 1982 upholding certain claims of the respondents, who are government employees, for house rent allowance. The question essentially turns upon the true construction of certain orders issued, from time to time, by the appellant.

2. Special leave is granted. The appeal is taken up for final hearing, heard and disposed of by the judgment.

3. The material facts necessary for resolving the controversy may briefly be stated :

Respondents who are serving in various posts of the Andhra Pradesh Fire Subordinate Service are, under their conditions of service, entitled to rent-free accommodation. Before January 22, 1975, wherever they were not provided with such accommodation, they were reimbursed to the extent of the actual rents paid by them subject to their vouching for the actual expenditure in that behalf. However, by G.O.Ms. No. 15 dated January 22, 1975 appellant granted to its employees who hold posts to which the benefit of the rent-free accommodation is attached and who are not provided with such accommodation, 15 per cent of their pay towards house rent allowance in lieu of such accommodation.

4. Subsequently, pursuant to and in implementation of the recommendations of the Pay Revision Commissioner in that behalf, appellant issued another G.O.Ms. No. 16 dated January 10, 1980 the operative part of which is in terms following :

3. Government, after careful consideration, have decided to accept the recommendation of the Pay Revision Commissioner. They, accordingly, hereby order that where an officer holding a post to which rent-free accommodation is attached is not provided with such accommodation, he shall be allowed to draw 10 per cent of his basic pay, subject to a maximum of Rs. 150 per month as additional amount of house rent allowance, in addition to the normal house rent allowance, if any, allowable at the place where he is posted.

The controversy in these proceedings pertains to the scope of this order, whether on a proper construction, this later order is susceptible of the understanding that the benefit under it is cumulative with and not in substitution of G.O.Ms. No. 15 of January 22, 1975.

5. The occasion and need for clarifying this having arisen, appellant by its further order G.O.Ms. No. 158, dated May 20, 1982, clarified what, according to it, is the true scope and import of G.O.Ms. No. 16 of January 10, 1980. Appellant said that the benefits of the said G.O. 16 were not in addition to and cumulative with but was in supersession and substitution of the earlier G.O.Ms. No. 15 of January 22, 1975. This clarification issued by the appellant on May 20, 1982 was challenged by the respondents before the Tribunal. The Tribunal held that the benefits under G.O.Ms. No. 15 and G.O.Ms. 16 were cumulative and complementary; that the view of the appellant that, the first order ceased to exist after the promulgation of the second was erroneous and that the purported clarification issued by G.O.Ms. No. 158, dated September 25, 1982 virtually deprived respondents of their entitlement to the legitimate quantum of the house rent allowance. Tribunal accordingly, declared G.O.Ms. No. 158 of May 20, 1982, as invalid and inoperative. The correctness of this view is assailed in this appeal.

6. G.O.Ms. No. 16, dated January 10, 1980 was, it is common ground, issued to implement the recommendations of the Commissioner for pay revision. It, therefore, becomes relevant to know what the recommendations in regard to the house rent allowance of government employees who are entitled to rent free quarters are. The Commissioner took note of the circumstance that house rent allowance, at varying rates appropriate to the places of posting, were allowable even in respect of those government employees who were not entitled to rent-free accommodation and that the class of government employees who, in public interests and having regard to the nature of their duties and responsibilities, were entitled to free accommodation should be appropriately compensated wherever such rent-free accommodation was not so provided. The Commissioner then proceeded to make the following recommendations in regard to this class of government employees :

The particular category of employees who are to be provided rent-free quarters in public interest are now given the same house rent allowance as the others who are not entitled to rent-free quarters. The additional facility which this category should enjoy is therefore, denied. It is, however, noticed that in the Police Department orders have been issued by government for payment of an additional 10 per cent of their basic pay in lieu of rent-free quarters in addition to the usual entitlement of house rent allowance under the general orders. Presumably it had been done to take care of the above factors mentioned. But this has to be done uniformly in respect of all such categories entitled to rent-free accommodation. As the government have already, in principle, recognised this distinction, it is only equitable that it should be extended to all such categories and the same is recommended for adoption.

Accepting these recommendations, appellant directed, in its G.O.Ms. 16, dated January 10, 1980, that this category of government employees shall be allowed to draw 10 per cent of their basic pay, (subject to a maximum of Rs. 150 per month) as additional amount of house rent allowance, "in addition to the normal house rent allowance, allowance at the place where he is posted".

7. The normal house rent allowance which is payable to all government employees is regulated by general orders issued from time to time. It is stated that it was at the relevant time, 15 per cent of the pay (subject to a maximum of Rs. 400) at Hyderabad, Secunderabad, Visakhapatnam, Warangal, Vijayawada and Guntur at different lesser rates depending upon the other places of posting.

8. Appellant's contention is that the expression "in addition to the usual entitlement of house rent allowance under the general orders" occurring in the Pay Revision recommendations read with expression "normal house rent allowance, if any, allowable at the place where he is posted", obtaining in the G.O. No. 16 of January 10, 1980, except, that the extra 10 per cent (subject to a maximum of Rs. 150 per month) recommended by the Pay Revision Commissioner and accepted by the appellant was not in addition to the 15 per cent referred to in G.O.Ms. No. 15 of January 22, 1975 but only in addition to the "usual" and "normal" house rent allowance applicable to all government employees. According to the appellant, the G.O.Ms. No. 15 of January 22, 1975, by necessary and inevitable implication, stood excluded, superseded and substituted by G.O.Ms. No. 16 of January 10, 1980.

9. The Tribunal did not accept this construction of the successive government orders. Tribunal seems to have thought that the Pay Revision Commissioner himself went wrong in his assumption, basic to the recommendations, in respect of the benefits which the respondents had enjoyed prior to the pay revision recommendation. This is what the Tribunal observed :

7. It will be observed that statements made by the commission that the government employees who were entitled to rent-free quarters and were not provided with such quarters were being given "the same house rent allowance as the others who are not so entitled to rent free quarters" is clearly wrong as, under the orders issued in G.O.Ms. No. 15, dated January 22, 1975, persons who were entitled to rent-free quarters and were not provided with such quarters were being given uniformly throughout the State 15 per cent of their pay as HRA.

The Tribunal accordingly, thought that reference to the "general orders" in the pay revision recommendations must, insofar as respondents were concerned, be held to be to G.O.Ms. No. 15 of January 22, 1975. Virtually, the Tribunal was seeking to correct, that according to it, was an error on the part of the Pay Revision Commissioner. That was not the scope of the proceedings before the Tribunal.

10. That apart, this view of the Tribunal, it is obvious, runs into certain constructional difficulties. The view of the Tribunal, would not square with, and would not also give due weight to, the expression "usual entitlement" in the recommendations and to the words "normal house rent allowance, if any, allowance at the place where he is posted". These expressions do not have reference to the special entitlements of the respondents before the pay revision recommendations but are descriptive and characteristic of the benefit given to the generality of government employees. Any other view would not reckon with and give due weight and meaning to the words "places where he is posted", because, the benefit under G.O.Ms. No. 15 of January 22, 1975, it is plain, did not depend upon the places of posting.

11. The exercise before the Tribunal was one of the appropriate construction to be placed on the successive orders and not as to what would, otherwise, be the reasonable quantum of house rent allowance in respect of this particular category of government employees which is a more general issue calling for a balancing of diverse, and often conflicting, claims and interests of different classes of government servants. Tribunal was not considering any such question. The enquiry purely related to the meaning and import of these orders.

12. On a construction of the relevant orders, we are persuaded to the view that appellant was clearly right in its contention as to the effect of the G.O.Ms. No. 16 of January 10, 1980. Respondents were

entitled by way of house rent allowance to 10 per cent of their basic pay (subject to a maximum of Rs. 150 per month) in addition to the usual house rent allowance payable to all government employees. The benefits under G.O.Ms. No. 16 of January 10, 1980 were not in addition to those under G.O.Ms. No. 15 of January 22, 1975.

13. In the result, this appeal is allowed, the order dated September 24, 1982 of the Tribunal under appeal set aside and the petitions filed by the respondents before the Tribunal are dismissed. In the circumstances of the case, we make no orders as to costs.

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