

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 2933 of 2001****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG****HONOURABLE MR.JUSTICE SHARAD D.DAVE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GITABEN S THAKUR - Petitioner(s)
Versus
UNION OF INDIA & 1 - Respondent(s)

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Appearance :

MR PH PATHAK for Petitioner(s) : 1,
MR BN DOCTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 31/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr.P.H.Pathak, learned counsel for the petitioner and Mr.B.N.Doctor, learned counsel for the respondents are heard. The petitioner, being aggrieved by the judgment dated 10.1.2000 passed in Original Application No.680 of 1993 by the Central Administrative Tribunal, Ahmedabad Bench rejecting the application submitted by the present petitioner, is before this Court.

2. The facts necessary for disposal of the present writ application are that the present petitioner joined the service somewhere in the year 1973 and married to one Mr.Thakur somewhere in the year 1977. Mr.Thakur in the year 1977 was already allotted the Government quarter. According to the petitioner, the husband continued to occupy the premises upto 1988 and thereafter vacated the same which persuaded the petitioner to claim HRA from the department, she received the same upto 1993, but on the complaint made by the husband, the department stopped payment of HRA and directed recovery of the amount already paid to her. Being aggrieved by the said order passed by the department, the petitioner took up the matter before the Central Administrative Tribunal in Original Application No.472 of 1993 which was disposed of on 15.9.1993 with a direction to the respondent establishment that before passing any order which has adverse civil consequence and was

adversely affecting the right of the petitioner, an inquiry ought to have been made.

3. The department, thereafter, made certain inquiries into the matter, according to the petitioner, the inquiry was not full-fledged and was an eye-wash. After conclusion of the inquiry, the department reiterated its stand and maintained its earlier order. Being aggrieved by the inquiry report and the direction of the department, the petitioner again came to the Central Administrative Tribunal in Original Application No.680 of 1993 which has been dismissed on 10.1.2000, being aggrieved by the said rejection, the petitioner is again before this Court.

4. Mr.Pathak, learned counsel for the petitioner submits that in case where the husband and wife have strain relation and the wife is not allowed to stay with the husband or the wife is required to prosecute the husband, the Central Government cannot say that the wife would not be entitled to separate accommodation or HRA.

5. The payment of HRA is regulated by the orders of the Government of India issued from time to time. Para 5 of the order governing the grant of HRA is in relation to condition for drawal of HRA. Sub-para (c)(ii) says that where one of the spouses has been allotted the Government accommodation, other

spouse would not be entitled to HRA even he or she is not residing with the other spouse. In view of the directions contained in the said order, it would not be possible to hold that the wife would be entitled to claim HRA, because she is living separately and for compelling reasons. The present is not the case where para 5(c)(ii) is under challenge before this Court. Even otherwise, challenge cannot be allowed in these collateral proceedings. The petitioner, however, would be free to challenge the correctness, validity or propriety of the said clause which debarred one of the spouses from claiming HRA if he or she is not living with the other spouse who has been allotted the accommodation.

6. Mr.Pathak, learned counsel for the petitioner next submitted that the above referred clause (ii) should be interpreted in a manner, so that it gives benefit to the destitute and to wife who under compelling reasons cannot stay with the husband. The law of interpretation in relation to reading down a particular provision would say that if there is some ambiguity in concerned provisions of law or the provisions are not in accordance with the other provisions of the Act, Rules, Bye-laws etc. then a particular provision can be read in a particular fashion and not otherwise. In the present matter, clause (c) is in close words. There is no ambiguity in it, and, therefore it is not possible

for us to read down the same nor it would be possible for us to hold that on face of clause (ii), the wife would be entitled to HRA.

7. It was further submitted that the wife had already gone to the Criminal Court seeking divorce, therefore, clause (ii) would not apply. We must reject the argument immediately. The criminal matter referred by Mr.Pathak was in relation to the prosecution under Section 498-A of the Indian Penal Code. It is not the case of the wife that she has approached the competent court of law under Section 13 of the Hindu Marriage Act, 1956 seeking divorce nor it is the case of the wife that the competent court have snapped ties between the husband and wife.

8. It was further submitted that perusal of the note appended to the order of the Central government would say that the Central Government is obliged to allot the house or give HRA after choice is exercised by the spouse. In the present matter, it is not the case of the petitioner wife that she has ever approached the Central Government that the husband and wife were exercising their choice and the wife was to be allotted the house after cancellation made in favour of the husband. It is not for the Government to ask for option, but it is for the husband and wife to make the submission jointly.

9. It was lastly submitted that in accordance with the directions contained in the order dated 15.9.1993 in Original Application No.472 of 1993 the respondent department was required to make a detailed inquiry into the matter and as such detailed inquiry was not made, the findings recorded in the inquiry are not binding.

10. In our considered opinion, this argument of frustration should not detain us unnecessarily. The Central Administrative Tribunal, while disposing of Original Application No.472 of 1993, had directed that the inquiry be made. The petitioner was asked to submit particular details. The petitioner had filed her affidavit in response to the department query dated 3.8.1993. In the said matter, she had nowhere stated that for what particular reason, she was entitled to HRA with effect from 1988. In the said matter, she did not say that she had approached to the Criminal Court for divorce. Her statement, in fact, was that she was prosecuting her husband for the offence punishable under Sections 498A, 323, 504 and 506(2) of Indian Penal Code. She did not state even a single word as to why she claimed HRA in 1988 or what reason crept up in her favour for payment of HRA.

11. Mr.Pathak submitted that the case of the petitioner all-throughout had been that after making

verification, the department started paying HRA to the petitioner and as such at this length of time, the department would not be entitled to make recovery.

12. So far as plea of verification by the department is concerned it is ipsi dixit by the petitioner in her own favour. No document has been annexed with the submission either before the department or before the Tribunal on either of the occasion or even before this Court. A pleading even made on oath would not be sufficient unless the pleading is based upon the foundational fact and the submission of the documents. We repeatedly asked Mr.Pathak that what document has been submitted in support of such plea to which Mr.Pathak has submitted that no such document had been filed. In absence of such document relating to verification into entitlement of the petitioner, it would not be possible for us to hold in favour of the petitioner. The argument, being misconceived, is rejected.

13. For the reasons aforesaid, we are unable to hold that the Tribunal was unjustified in rejecting the petitioner's case or the department was unjustified in directing the recovery of money paid to the petitioner.

14. On 21.12.2001 this Court had issued ad-interim order directing that on petitioner giving an

undertaking in writing to the department to effect the recovery of the same from her salary subject to the decision of this petition, recovery of HRA amount at present shall be stayed. As we are dismissing the writ application, interim order dated 21.12.2001 is hereby recalled and vacated. The department would be entitled to make recovery in accordance with law. The petition is dismissed with cost of Rs.5000/-.

(R.S.Garg,J)

(Sharad D.Dave,J)

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