

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.86 OF 2017

DISTRICT : AURANGABAD

1. Shri Badrinath Y. Ghongade.)
Age : 48 Yrs., Occu.: Service as A.S.I,)
Daulatabad Police Station, Aurangbad.)

2. Shri Shankar R. Pawar.)
Age : 45 Yrs, Occu.: Service as Head)
Constable at Daulatabad Police Station,)
Aurangabad.)

3. Dileep K. Akolkar.)
Age : 48 Yrs, Occu. Service as Head)
Constable at Daulatabad Police Station,)
Aurangabad.) **)...Applicants**

Versus

1. The Secretary,)
Finance Department, Mantralaya,)
Mumbai 400 032.)

2. The Commissioner of Police,)
Office of Commissionerate,)
Aurangabad City, Mill Corner,)
Aurangabad – 431 001.) **)...Respondents**

Mr. S.D. Joshi, Advocate for the Applicants.

Mrs. R.S. Deshmukh, Presenting Officer for Respondents.

CORAM : SHRI B.P. PATIL (MEMBER-J)

Closed on : 05.04.2018

Pronounced on : 17.04.2018

J U D G M E N T

1. The Applicants have challenged the communication dated 29.06.2016 issued by the Respondent No.2 reducing the House Rent Allowance (H.R.A.) from 20% to 10% of the basic pay and disallowing the Local Convenience Allowance (L.C.A.) and directing to recover the excess amount paid to them towards HRA with effect from July, 2016 by filing the present Original Application (OA).

2. The Applicants are the employees of the Home Department. They have joined the service on 19.03.1993 as Police Constables. During their service, they worked at various places like Chhavani, City Chowk and in the Traffic Branch. The Applicant No.1 is working as Assistant Sub Inspector (ASI) at present while the other two Applicants are serving as Head Constables. In the month of September, 2014, all the Applicants have been transferred and posted at Daulatabad Police Station.

3. The Finance Department of Government of Maharashtra has taken a policy decision modifying the HRA payable to the Government servants, on the lines of decision taken by the Central Government by G.R. dated 11.12.1998 as

per the recommendation of 5th Pay Commission. The Government has classified the cities and towns in different categories such as A-1, A, B-1, B-2, C and Non- classified and fixed the rate of HRA accordingly. The Aurangabad city has been shown under the category B-2 as shown in the Annexure-1 of the G.R.

4. Thereafter, the Government issued further G.Rs. dated 15.02.1999 and 10.11.2003 remaining the doubts in applying the interpretation of the provisions of G.R. dated 11.12.1998. On 17.06.2005, the Finance Department had issued another G.R. reclassifying the city/town for the purpose of payment of H.R.A. and L.C.A. By this G.R, the Government cancelled the Annexure 1 and 2 by G.R. dated 11.12.1998 and supplied the new Annexure 1 and 2 to the G.R. dated 17.06.2005 which will come into operation. The classification of the cities and towns made by the Finance Department in the G.R. dated 17.06.2005 is totally different than the classification of cities and towns made by the State in its Urban Development Department. It has been mentioned therein that if classification of the Nagar Parishad has been changed, there shall be no change in HRA and LCA. In view of the Annexure 1 of the said G.R, Aurangabad city includes Aurangabad (Corporation area) and Aurangabad (Chhavani). It is their contention that in spite of the cancellation of G.R. dated 11.12.1998, all the Applicants were getting HRA at the rate of 20% of their basic pay. It is their contention that in view of the

Annexure 1 and 2 of the G.R. dated 17.06.2005, there is no difference in the city area of the Aurangabad city as well as Gram Sabha Ghatak Samuha.

5. The Finance Department, thereafter, issue one more G.R. dated 24.08.2009 revising HRA and continuation of LCA. Under the said G.R, the cities and towns falling in A-1 classification have been reclassified as 'X' whereas cities and towns the falling in Class A, B-1 and B-2 are reclassified as 'Y'. For the cities and towns falling in A, B-1 and B-2 category, the rates of HRA were revised from 15% to 20%. Aurangabad city falls in 'Y' category. Thereafter, again one more G.R. dated 16.12.2016 came to be issued for the purpose of reclassification of the cities and towns mentioned in Annexure 1 to G.R. dated 24.08.2009. As per the provisions of the said G.R, the cities falling in 'Y' classification are eligible for HRA at the rate of 20% of the basic pay. The said G.R. has been issued after issuance of impugned order dated 29.06.2016 by which rate of HRA of the Applicants has been reduced from 20% to 10%. It is their contention that they filed representations with the Respondents on 07.07.2016, 09.12.2016 and 25.10.2016 challenging the G.R. dated 29.06.2016 contending that they have been posted at Daulatabad in the year 2014. For want of Government accommodation as well as for want of private accommodation on rent at the vicinity of the Daulatabad, they require to stay at Aurangabad city and at Chhavani area. Most of the Applicants

have secured Home Loans from the Banks and from Credit Societies. They have to travel from Aurangabad to Daulatabad every day. They are getting net salary in between Rs.10,000/- and 12,000/- only. Because of the liabilities accrued by them on account of various loans and travelling, it is difficult to them to manage their family, and therefore, they requested to pay the HRA and the rate of 20% and also to pay LCA to them.

6. It is their contention that, in the year 2014, the Government in its Home Department has issued a Notification under the provisions Cr.P.C. in respect of creation of Daulatabad Police Station segregating some areas falling within the jurisdiction of Chhavani Police Station and M.I.D.C. Waluj Police Station. The Applicants were the part and parcel of Aurangabad city and Chhavani Police Station prior to the issuance of the Notification. They were transferred and posted at Daulatabad because of the creation of new Police Station there. The creation of new Police Station does not take them away from the jurisdiction of Aurangabad (Chhavani) Police Station. It is their contention that the order issued by the Respondent No.2 has been without considering all these facts and, therefore, it is not legal one. Therefore, they prayed to quash the impugned order dated 29.08.2016 issued by the Respondent No.2 reducing HRA from 20% to 10% of the basic pay and denying them the LCA and directing the recovery of the HRA already paid to them at excess rate by filing the present O.A.

7. The Respondents filed their Affidavit-in-reply and resisted the contention of the Applicants. They have not disputed about the appointment of the Applicants initially on the post of Constable, their promotions, their service tenure at different places and their transfer to Daulatabad Police Station in the year 2014. They have not disputed the fact regarding creation of Daulatabad Police Station by segregating some areas from Chhavani Police Station and M.I.D.C. Police Station.

8. It is their contention that, Village Daulatabad does not fall within the vicinity of Aurangabad Municipal Corporation area and Aurangabad Chhavani as it has its own Gram Panchayat. It is their contention that, the Police Officers working at Daulatabad Police Station doesn't stay at Government Quarters. Therefore, as per the G.R. dated 24.08.2009, they are entitled to get 10% HRA of the basic and they are not entitled for LCA. It is their contention that, the Police Constables and Officers working under Waluj Police Station including MIDC Waluj are getting HRA at the rate of 10% of basic pay and they are also not entitled to get LCA. It is their contention that, like Waluj Police Station and MIDC Waluj, Daulatabad too falls under the Rural area, and therefore, the employees working there are getting only 10% HRA and they are not getting the LCA.

9. It is, therefore, further contended by the Respondents that 'C' Class and Non-classified cities and villages have been newly classified as category of the employees

working in the cities and villages so categorized, has been getting revised rent at the rate of 10% of the basic pay. In view of the G.R. dated 24.08.2009, Aurangabad (Urban Conglomeration) has been incorporated in the cities of 'Y' category. As per the Annexure 1 and 2 of G.R. dated 17.06.2005 issued by the Finance Department, Aurangabad (Urban Conglomeration) is supposed to include Aurangabad (Municipal Corporation) and Aurangabad (Cantonment i.e. Chhavani). The employees working in the offices situated within the jurisdiction of the enlarged Aurangabad (Urban Conglomeration) are entitled to receive HRA at the rate of 20% of their basic pay, as the Aurangabad Municipal area and Aurangabad (Chhavani) are considered under the 'Y' category in view of the G.R. dated 24.08.2009.

10. HRA for the enlarged Aurangabad (Urban Conglomeration) has been kept at the same rate i.e. at the rate of 20% vide G.R. of Finance Department dated 16.12.2016. The service place of the Applicants i.e. Daulatabad is not falling within the area of Aurangabad (Urban Conglomeration). The duty place of the Applicants is being in the Gram Panchayat area, they are not entitled to receive HRA at the rate of 20% as per the G.R. dated 24.08.2009 and 16.12.2016. Their service place is falling in 'Z' category to which the HRA at the rate of 10% is applicable, and therefore, the Applicants are entitled to get HRA at the rate of 10%.

11. Similar other employees working at Police Stations like MIDC & Waluj are also within Gram Panchayat area and, therefore, they are getting the HRA at the rate of 10% and they are also not getting LCA.

12. It is their contention that, after receiving the representation of the Applicants, the Respondent No.2 has forwarded the same along with his proposal to the Director General of Police (DGP), Mumbai on 10.02.2017 and the DGP rejected the said proposal submitted by the Respondent No.2 vide its order dated 15.05.2017. It is their contention that the Applicants are interpreting Government policy as per their convenience and, therefore, they are not entitled to get HRA at the rate of 20%. It is their contention that the order issued by the Respondent No.2 directing the recovery of HRA received by the Applicants in excess of the right is legal one, and therefore, they prayed to reject the O.A.

13. I have heard Shri S.D. Joshi, learned Advocate for the Applicants and Smt. R.S. Deshmukh, learned Presenting Officer (P.O.) for the Respondents and perused the documents produced by the parties on record.

14. Admittedly, all the Applicants have joined the Police force in Home Department on the post of Police Constable on 19.03.1993. Admittedly, they have worked at various places like Chhavani, City Chowk and in the Traffic Branch. There is

no dispute about the fact that the Applicant No. 1 is presently working as Assistant Sub Inspector while the Applicant Nos.2 and 3 are working as Head Constables. Admittedly, in view of the decision of the Government in the year 2014 in new Police Station at Daulatabad has been established by segregating some areas falling within the jurisdiction of Chhavani Police Station and M.I.D.C. Police Station. Because of the creation of new Police Station at Daulatabad, the Applicants came to be transferred to Daulatabad Police Station in view of the orders issued in the month of September, 2014 and since then, they are working there. Admittedly, Daulatabad Police Station is situated within the precinct of village Daulatabad and there is separate Gram Panchayat at Daulatabad. Admittedly, it is not within the precinct of Aurangabad Municipal Corporation or Aurangabad (Chhavani) i.e. Cantonment area. Admittedly, the Applicants were getting HRA at the rate of 20% of their basic pay since they have been transferred to Daulatabad Police Station i.e. since the month of September, 2014. Admittedly, no Government accommodation has been provided to the Applicants at Daulatabad, and therefore, they are staying within the area of Aurangabad Municipal Council and Aurangabad Cantonment area. Admittedly, they required to travel from Aurangabad to Daulatabad every day for discharging their duties, since their families are staying at Aurangabad & Chhavani. It is not much disputed that, in view of the several G.Rs. issued by the Government of Maharashtra, the rate of HRA payable to employees staying in

different cities and towns has been fixed from time to time. Admittedly, the Government has issued G.R. and, therefore, classified the cities and towns in different categories. Admittedly, in view of the latest G.Rs. dated 24.08.2009 and 16.12.2016 issued by the Finance Department, the rate of HRA and the classification/categories of the cities and towns has been made therein. As per the said G.R, the Aurangabad (Urban conglomeration) has been incorporated in the 'Y' category and it includes the area of Aurangabad Municipal Corporation and Aurangabad Cantonment area. Admittedly, the village Daulatabad is not falling within the area of Aurangabad Municipal Corporation and Aurangabad (Chhavani area).

15. The learned Advocate for the Applicants has submitted that the Daulatabad Police Station is coming under the jurisdiction of Commissionerate, Aurangabad. He has submitted that, though a separate Police Station has been established at Daulatabad, no Government residential accommodation or suitable private accommodation are available to the Police employees in village Daulatabad, and therefore, the Applicants and other Policemen have kept their families at Aurangabad city or within the area of Aurangabad Cantonment. Admittedly, the Applicants have to travel every day from Aurangabad to Daulatabad to discharge their duties. He has submitted that the Applicants are getting HRA at the rate of 20% since the date of their transfer to Daulatabad i.e.

from September, 2014 till the impugned order has been issued by the Respondent No.2 on 29.07.2016 directing recovery of arrears of excess amount paid to them on account of HRA, LCA, and directing to pay HRA to them at the rate of 10% of the basic and denying LCA.

16. Learned Advocate for the Applicants has submitted that the excess amount of HRA has been paid to the Applicants due to the mistake on the part of Respondent No.2 and there was no misrepresentation or fraud played by the Applicants in getting the HRA at the rate of 20% and LCA, and therefore, the recovery cannot be ordered in view of the guidelines given by the Hon'ble Apex Court in the case of **High Court of Punjab & Haryana & Ors. Vs. Jagdev Singh : Civil Appeal No.3500 of 2006, dated 29th July, 2016.** Therefore, he prayed to allow the O.A. and to quash the impugned order.

17. Learned P.O. has submitted that there is no illegality in the impugned order issued by the Respondent No.2. She has submitted that the Applicants have served at Daulatabad which is not part and parcel of the area of Municipal Corporation of Aurangabad Chhavani i.e. Cantonment. She has submitted that the area of Aurangabad Municipal Corporation and Aurangabad Cantonment has been considered as part of Aurangabad (Urban Conglomeration) and same is classified under the 'Y' category. Those Government employees residing in the cities/towns categorized and 'Y' category are

entitled to get HRA at the rate of 20% and also entitled to get LCA. She has submitted that, village Daulatabad, where the Applicants are posted, is not coming under 'Y' category, and therefore, they are entitled to get HRA at the rate of 10% only and they are not entitled to get LCA. He has submitted that the Applicants have received the excess amount of HRA and LCA from September, 2014 though they were not entitled to it. Therefore, the Respondent No.2 has issued the order directing the recovery of the said amount and also ordered to pay them HRA at the rate of 10% and also held that they are not entitled to get LCA amount. He has also submitted that the decision of the Respondent No.2 has been upheld by the DGP while rejecting the proposal sent by him along with the representation of the Applicants and there is no illegality in the impugned order, and therefore, he prayed to reject the O.A.

18. On going through the documents on record, it reveals that prior to September, 2014, the Applicants were working in the Police Stations within the area of Aurangabad Municipal Corporation and Cantonment area, Aurangabad which is governed as a 'Y' category city. Therefore, HRA at the rate of 20% of basic pay has been made to them. They were receiving LCA also. But in the month of September, 2014, a new Police Station has been created at Daulatabad, which is situated within the precinct of Daulatabad Gram Panchayat. In view of the G.Rs. dated 24.08.2009 and 16.12.2016 issued by the Finance Department, the HRA at the rate of 10% is

admissible to the employees working in the Rural area. They are not entitled for LCA. The Applicants received the amount of HRA at excess rate and LCA, to which they were not entitled since September, 2014. Therefore, the Respondent No.2 has rightly passed the impugned order directing recovery of an excess amount paid to the Applicants towards HRA and LCA and also directed to pay HRA at the rate of 10% to the Applicant. The Respondent No.2 has further held that the Applicants are not entitled to get LCA.

19. There is no illegality in the impugned order as the said order has been issued in view of the G.Rs. issued by the Government from time to time. Therefore, I find no illegality or arbitrariness in the impugned order. Therefore, no interference is called for in the impugned order.

20. I have gone through the decision referred by the learned Counsel for the Applicants. In that matter, the original Petitioners challenged the direction issued by the State for recovery of the excess payment made to them towards salary. The Hon'ble Apex Court has relied on the decision of the Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (White Washer) : Civil Appeal No.11527/2017 arising out of SLP (C) No.11684/2012, dated 18th December, 2014** wherein it has been held that in certain situations, the recovery would be impermissible in law. The situations mentioned therein are not attracted in the instance

case. In this case, the recovery has been ordered by the Respondent No.2 in view of the excess amount paid to the Applicants on account of HRA & LCA to which they were not entitled. The Applicants received the excess amount of HRA and LCA though they were not entitled to it. Therefore, they are responsible to repay it. Therefore, in my view, the principles laid down in the said decision are not attracted in this case considering the facts in this case. Therefore, the said decision is not much useful to the Applicants in the present case.

21. The Respondent No.2 has directed to recover the excess payment made to the Applicants on account of HRA and LCA in reasonable monthly installments. Therefore, in my view, it will not cause hardship to the Applicants. Therefore, I find no illegality in the impugned order. There is no merit in the O.A. Consequently, the same deserves to be dismissed.

22. In view of the above discussion, the Original Application stands dismissed with no order as to costs.

Sd/-
(B.P. Patil)
Member-J
17.04.2018

Mumbai
Date : 17.04.2018
Dictation taken by :
S.K. Wamanse.