

thereafter. The vacancies will relate back to the year for which those were determined and requisition was sent by the State Government to the Commission.

(22) The petitioner must show semblance of a legal right to claim a writ of *mandamus*. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a *mandamus*. A person can be said to be aggrieved only when a person is denied a legal right by someone, who has a legal duty to do something or to abstain from doing something. In the instant case, the petitioners have not been able to establish that they have got a judicially enforceable right.

(32) For the reasons aforesaid, the writ petitions are devoid of any merit and are accordingly dismissed but with no order as to costs.

J.S.T.

Before :—S. S. Sodhi and G. C. Garg, JJ.

KHARAITI RAM AND OTHERS,—Appellants.

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Letters Patent Appeal No. 895 of 1991.

4th February, 1992.

Constitution of India, 1950—Art. 226—Punjab Government Instructions dated 30th August, 1988/19th September, 1990—House Rent Allowance earlier payable to employees posted at places within 16 kms. belt of the International Border—1988 instructions making house rent admissible on classification of cities into A, B, C, D made on the basis of population—In view of instructions of 1988 and 1990 H.R.A. being paid for Border area postings is not protected.

Held, that a plain reading of clauses 2, 3 and 5 of Punjab Government Instructions, 1988 would show that the protection afforded thereby is in respect of the house rent allowance being drawn by employees at rates higher than those specified in these instructions. It is pertinent to note that house rent allowance payable in the 16 kms. border belt does not figure in such categorization of cities in these instructions.

(Para 4)

Held further, that the amount of house rent allowance of first class cities admissible before 1st August, 1988 to the employees

posted in the belt of 16 kms. of 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.

(Para 6)

Letters Patent Under Clause X of the Letters Patent Against the order and judgment of Hon'ble Mr. Justice G. R. Majithia dated 7th June, 1991 passed in Civil Writ Petition No. 13504 of 1990.

R. K. Chopra, Advocate with Mr. S. K. Dhawan, Advocate, Sumeet Gupta, and Mr. J. S. Bagga, Advocate, for the appellants.

H. S. Riar, Addl. A. G. Punjab, for the respondents.

JUDGMENT

S. S. Sodhi, J.

The matter here concerns house rent allowance payable to employees of the Punjab Government posted at places falling within 16 kilometers of the Indo-Pak Border in Punjab.

(2) Conceding the settled position in law, that grant of house rent allowance was a mere concession and not a statutory right enforceable in writ proceedings, Mr. R. K. Chopra, counsel for the writ petitioners sought to found his claim for such allowance, or rather the extent of it, upon the relevant instructions issued by the government in this behalf. The controversy here thus rests upon the interpretation of such instructions.

(3) A reference to the record shows that in the first instance, the Government of Punjab, by its letter of March 31, 1970, sanctioned the grant of rent-free accommodation or house rent allowance at the rate of $7\frac{1}{2}$ per cent of the basic pay in lieu thereof, to all employees posted in cities, towns or villages falling within the ten miles belt of the International Border in the Districts of Ferozepore, Amritsar and Gurdaspur. Later, by its letter of May, 15, 1973, annexure P/1, the house-rent allowance in this ten-miles border belt in lieu of rent-free accommodation, was raised to $12\frac{1}{2}$ per cent of the basic pay of the employee concerned.

(4) Next, followed the instructions issued by the government on August 30, 1988, annexure P/2, in pursuance of the recommendations of the Third Pay Commission. A reading thereof shows that

all towns and cities in the State of Punjab including Chandigarh were classified into Classes A.B.C. and D Cities respectively, depending upon their population. House rent allowance for the various pay ranges admissible in these different Classes of cities or towns, were prescribed therein. Below, these rates, the following provisions was made :—

- | | | |
|---------|----|----|
| (i) xx | xx | xx |
| (ii) xx | xx | xx |

However, the amount of house rent allowance being drawn by the employees at higher rates than those specified above shall be protected, till further rate of house rent allowance get adjusted in those rates.

- (iii) The House Rent allowance shall no longer be admissible at the place falling within 8 Kms. radius of the municipal/towns 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 employees.”

Relying upon this clause, it was sought to be contended by the counsel for the writ petitioners that by virtue thereof the house rent allowance being paid to employees posted within 16 Kms. of the International Border, stood protected. This is indeed a contention that cannot be sustained, as a plain reading of this clause would show that the protection afforded thereby is in respect of the house rent allowance being drawn by employees at rates higher than those specified in respect of the four categories of cities specified in these instructions. It is pertinent to note that house rent allowance payable in the 16 Kms. border belt does not figure in such categorization of cities in these instructions.

(5) Reference was next made to the instructions issued by the Government on December 23, 1989, annexure P/4, whereby it was provided that government employees entitled to rent-free accommodation, when not provided such accommodation, shall be allowed payment of 8 per cent of their basic pay in addition to the normal

house rent allowance, if admissible at the place of posting. The argument founded upon these instructions being that this 5 per cent house rent allowance must be construed as an addition to what was being paid to employees in this border belt before the Third Pay Commission's recommendations. This again is a contention that cannot stand scrutiny. A plain reading of these instructions clearly detracts from such being the intention or order of the State Government.

(6) The correct position regarding the payment of house rent allowance is spelt in the latest instructions of government of September 19, 1990, annexure P-6, wherein, it has been stated that government employees entitled to rent free accommodation, when not provided such accommodation, shall be allowed payment equal to house rent charged from government employees for government accommodation, that is, 5 per cent of the basic pay, in addition to the normal house rent, 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 per cent of the basic pay in addition to the house rent allowance, if the place of posting of the employees falls in the Class "A" Class "B", "C" and Class "D" cities as the case may be in accordance with the instructions contained in the Department of Finance letter No. 10/7/88-FPII/8014, dated the 30th August, 1988. It is made clear that the amount of house rent allowance of first class cities admissible before 1st August, 1988 to the employees posted in the belt of 16 Kms. of 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."

(7) On a plain construction of the relevant instructions, therefore, it will be seen that the claim of the petitioners for house rent allowance, as put-forth by them, is clearly unsustainable and was thus rightly disallowed by the learned Single Judge.

(8) This Letters Patent Appeal is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.

R.N.R.