

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 197 of 2016**

Surendra Pratap Singh S/o Late Shri Vishwanath, aged about 63 years, Occupation Retd. Senior Clerk Grade- I, (S L U) At Jhilmili, S E C L, Sub Area, Baikunthpur area, Distt. Korea (Chhattisgarh), R/o At & P O Badsara, District Surajpur, (Chhattisgarh)

---- Petitioner**Versus**

1. Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur through the Presiding Officer, Central Government Industrial Tribunal-Cum- Labour Court, 1230 Gole Bazar Ward, Wright Town, Jabalpur, (Madhya Pradesh)
2. South Eastern Coalfields Limited, through the Chairman- Cum- Managing Director, South Eastern Coalfields Limited, Seepat Road, Bilaspur, (Chhattisgarh)
3. Chief General Manager, South Eastern Coalfields Limited, Baikunthpur Area, P O Baikunthpur, Dist. Korea, (Chhattisgarh)
4. Sub Area Manager, South Eastern Coalfields Limited, P O Pandavpara (Patna), Distt. Korea, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Dhaniram Patel, Advocate
For Respondents 2 to 4	:	Shri Vinod Deshmukh, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****06/03/2017**

The petitioner through the writ petition has assailed the order dated 15.02.2016 Annexure P-1 passed by the Central Govt. Industrial Tribunal-Cum-Labour Court, Jabalpur (hereinafter referred as 'CGIT/LC') in case No. CGIT/LC/R/106/2011. Vide the said order, the CGIT/LC in a reference case has refused to grant relief to the petitioner holding that it was not wrong on the part of the Management in not granting the petitioner subsistence allowance for the period during which he was in jail in connection with a criminal case.

2. Brief facts relevant for adjudication of the petition are that the petitioner in the instant case was working as a senior clerk in the office under respondents 2 to 4. On 13.12.2007 the petitioner got arrested in connection with a criminal case for the offence under Section 302/34 IPC. The petitioner immediately applied for casual leave for the period from 15.12.2007 to 22.12.2007 and till 22.12.2007 he was also paid the salary. The petitioner remained in jail up to 21.10.2009 on which date by the judgment of the trial Court the petitioner was acquitted from the charges levelled against him. Immediately thereafter, the petitioner reported for joining and he was allowed to join his duty on 16.12.2009.

3. The grievance of the petitioner is that since he was under judicial custody, in view of Clause 28 of the Standing Order applicable to the respondents 2 to 4 establishment, the petitioner is supposed to be deemed to have been placed under suspension on account of his being prosecuted in a criminal case where he had remained under police custody for more than 48 hours. Therefore, the petitioner would have been entitled for the subsistence allowance till the date of joining. However, non-granting of subsistence allowance to the petitioner is illegal and bad in law. Therefore, the petitioner raised a dispute claiming for the said benefit.

4. The matter was referred to Central Govt. Industrial Tribunal-Cum-Labour Court for deciding the following terms of reference:

“Whether the action of the management of the Chief General Manager, SECL, Baikunthpur Area and the Sub Area Manager, Jhilmili Sub Area SECL, District Korea (CG) in non-payment of suspension allowances to Shri Surendra Pratap Singh Sr. Clerk Grade I (SLU) during the period of his judicial custody from 23.12.2007 to 21.10.2009 without suspension was legal and justified? To what relief the workman concerned is entitled to and from which date?”

5. The matter was registered as case No. CGIT/LC/R/106/2011. Either of the parties to the dispute entered appearance and submitted their respective claims.

6. The petitioner was banking hard upon the Standing Order applicable to the establishment particularly clause 28.9 which envisages the grant of 50% of the wages as subsistence allowance in the event the management places a worker under suspension while the employee is being prosecuted in a grave criminal offence involving moral turpitude or murder.

7. The Management in their written statement denied the petitioner's entitlement for subsistence allowance and submitted that the subsistence allowance is given to a person who is placed under suspicion. In the instant case, since the management did not place the petitioner under suspicion, he would not be entitled for subsistence allowance. It was the contention of the Management that the workman had proceeded on casual leave from 14.12.2007 to 21.12.2007. Thereafter he did not report for duty and therefore the said period was treated as unauthorized absence as there was no any intimation or sanction. The Management further in their statement of claim submitted that the workman was also issued a charge sheet on 16.02.2008 for unauthorized absence but later on, the workman submitted a representation intimating the Management that he is in judicial custody in connection with an offence under Section 302/34 of IPC in Criminal Case No. 54 of 2007. After this intimation which was received by the Management, the charge sheet was not proceeded any further and subsequent to the acquittal of the petitioner from the criminal case, he was permitted to resume his duty. According to the management, since the period has been treated as unauthorized absence, the petitioner would not be entitled for the subsistence allowance as claimed by him.

8. Both the parties to the dispute led evidence of one witness each. On behalf of the petitioner, it was his evidence which was recorded wherein he has admitted the fact that he had sought casual leave for the period from 14.12.2007 to 21.12.2007 which was granted and he was paid salary for the said period. Subsequently, he did not report for duty since 22.12.2007 nor was there any sanction or permission granted by the Management. He has also admitted the fact that he was prosecuted for a criminal case under Section 302/34 of IPC and he was in judicial custody from 14.12.2007 to 21.10.2009.

9. Likewise, the witness on behalf of the respondent Management has deposed that initially the petitioner was granted casual leave from 14.12.2007 to 21.12.2007. Thereafter he was absent from duty and on account of his unauthorized absence, he was issued a charge sheet on 16.02.2008. Subsequently, on learning that the petitioner is in judicial custody being involved in a criminal case, the Management did not proceed further with the enquiry and subsequent to his reporting for duty after being acquitted, the petitioner was granted joining.

10. It was the contention of the counsel for the petitioner that the non granting of subsistence allowance and the award passed by the CGIT/LC both are bad in law for the reason that the petitioner's services cannot be treated to be *de facto* non for the reason that no order in this regard has been passed by the Management nor has the management taken a decision in this regard. According to the counsel for the petitioner, since the petitioner was in judicial custody, he would be deemed to have been placed under suspension on account of his being in custody for a period of more than 48 hours. That applying the deeming provision for suspension, the petitioner would be entitled for the subsistence allowance. Counsel for the petitioner referred to Clause 28.9 of the standing order seeking for the claim.

11. Refuting the claim of the petitioner, counsel for the management submitted that since the petitioner was never placed under suspension and the said period was treated as unauthorized absence, he would not be entitled for the subsistence allowance. According to the counsel for the Management, the subsistence allowance is granted to a person who is placed under suspension and in the instant case, no order of suspension was issued. Thus, the award passed by the CGIT/LC is proper, legal and justified and does not warrant any interference.

12. Having heard the contention put forth by the counsel appearing on either side and on perusal of the record it would be relevant at this juncture to refer to Clause 28.9 which for ready reference is reproduced hereunder:

“28.9. Notwithstanding the provisions contained in these Standing orders, as above, the management reserves the right to suspend a workman being prosecuted in a court of law for any grave criminal offence involving moral turpitude or murder until the disposal of the trial. In such cases, the workman concerned shall be entitled to 50% of wages as subsistence allowance. In case the above workman is finally acquitted, he would be paid full wages for the period of suspension.”

13. It is this Clause which has been banked upon by the counsel for the petitioner. A plain reading of the provision of Clause 28.9 itself clearly reflects that it is a discretionary power which has been conferred upon the management to suspend a workman while he is being prosecuted in a grave offence involving in a moral turpitude. There is no deeming clause as has been claimed by the petitioner envisaged in any of the Clauses of the Standing Orders. Further Clause 28.2 of the Standing orders clearly spells out that the order of suspension shall always be in writing which again is not there in the instant case.

14. Thus, on the basis of the evidences which have come on record and which are undisputed facts, in addition, taking into consideration the provisions of the Standing orders which do not provide for a deeming clause

and the Management never having issued any order of suspension, it is difficult to accept that the petitioner is entitled for subsistence allowance when his services were never placed under suspension. Since the reference made to the CGIT/LC was also confined to the alleged denial of subsistence allowance, it cannot be said that the CGIT/LC has committed any illegality or infirmity or has reached to a wrong conclusion while denying the claim of the petitioner. The finding of the CGIT/LC also cannot be said to be a perverse finding as the same is on the basis of the evidences which have come on record coupled with the fact that the facts of the case were not in dispute at all.

15. The Court while exercising the writ jurisdiction has to only see whether any blatant error has been committed on facts or jurisdiction or competency by the Court hearing the matter. In addition, the writ Court also would see whether the finding arrived at is perverse finding or not. In the absence of any of the aforesaid illegalities, the writ Court cannot convert itself into an appellate forum. The writ Court would not threadbare go into the facts and evidences thrashed out by the Industrial Court, for reaching to a different conclusion.

16. The judgment referred by the counsel for the petitioner in the case of Gangacharan Sharma v. State of M.P. [2005 (1) M.P. Weekly Notes page 247] is distinguishable on its facts. In the said case, the employee was placed under suspension and after his conviction, the subsistence allowance was stopped. Later on, the employee was dismissed from service. Therefore, the Court had held that since the Management had passed an order of dismissal, the subsistence allowance would have to be provided till the date of his dismissal from service which is not the fact in the present case. Therefore, the said judgment and the ratio laid down therein is distinguishable on its facts.

17. For the aforesaid reasons, this Court does not find any strong case made out for interfering with the impugned order passed by the CGIT/LC dated 15.02.2016. Thus, the present writ petition being devoid of merit deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE