

LPA No.1620 of 2017 (O&M) -1-

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No.1620 of 2017 (O&M)

Date of Decision : 13.11.2017

State of Haryana and others

....Appellants

Versus

Smt. Santosh Kumari

...Respondent

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI**

Present : Ms.Kirti Singh, DAG, Haryana.

MAHESH GROVER, J. (Oral)

This appeal is directed against the judgment of the learned
Single Judge dated 15.05.2017.

Shri Satish Kumar, since deceased, was the employee who
was placed under suspension for absence from duty on 12.05.2011.
He died while under suspension on 21.05.2013. The period he
remained absent from duty i.e. from 21.12.2010 till 11.05.2011 was
treated as leave of kind due by the appellants but the period under
suspension was excluded for grant of pension and other financial
benefits admissible to the deceased employee as claimed by his legal
representative. The learned Single Judge concluded that since the
order of suspension subsisted with no finality to the proceedings, the
appellants would be bound to release the financial consequences of
this period such as pay etc., which is now the cause of grievance to
the appellants who contend that the order is unsustainable in view of
the provisions of Rule 7.2 of Haryana Civil Services Rules, Vol-I, Part

1.

We have heard the learned counsel for the appellant.

The relevant portion of Rule 7.2 is extracted here-below :

“ALLOWANCE DURING PERIOD OF SUSPENSION

7.2.(1) A Government employee under suspension shall be entitled to the following payments, namely:—

(i) in the case of a Warrant Officer in Civil employ who is liable to revert to military duty, the pay and allowances to which he would have been entitled had he been suspended, while in military employment.

(ii) in the case of any other Government employee —

(a) a subsistence allowance at an amount equal to the leave salary which the Government employee would have drawn if he had been on leave on half pay, and in addition dearness allowance, if admissible, on the basis of such leave salary:

Provided that where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of

the first six months as follows:–

(i) the amount of subsistence allowance may be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government employee.

(ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government employee.

(iii) the rate of dearness allowance will be based on the increased, or as the case may be, the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above;

(b) any other compensatory allowances

admissible from time to time on the basis of pay of which the Government employee was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

(2) No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate, and the authority which made or is deemed to have made the order of suspension is satisfied that he is not engaged in any other employment, business, profession or vocation:

Provided that in the case of a Government employee dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods as the case may be, fall short of the amount of subsistence allowance and other allowances that would otherwise be admissible to him, where the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.”

To a pointed question by us as to whether the subsistence allowance was increased in terms of the aforesaid rule by the appellants, the answer was in the negative.

Be that as it may, the aforesaid rule does not come to the rescue of the appellants in any manner. The fact remains that the deceased employee was placed under suspension in May 2011 and he died in harness in May 2013, after a lapse of two years with no finality to the disciplinary proceedings against him. This in our considered opinion is a grave fault on the appellants' part. An employee under suspension can neither be forced into uncertainties of future course and nor can he be deprived of the benefits of Rule 7.2 which talks of enhanced subsistence allowance in the event of proceedings going beyond six months. The appellants clearly denied him this benefit while forcing him to the uncertainties of the inconclusive disciplinary proceedings. The learned Single Judge was, therefore, right in granting the benefits of this period as also counting them for pensionary purpose. While granting the relief to the legal representative of the deceased employee. The learned Single Judge has observed as follows :

“.....Concerned respondent is hereby directed to regulate the suspension period from 12.05.2011 to 20.05.2013 as a duty for all purposes including financial benefits like difference of pay if the subsistence allowance has been paid to the deceased employee during the intervening period from 12.05.2011 to 20.05.2013. If

subsistence allowance is not paid, entire pay which was due to the deceased Sh.Satish Kumar be paid, to the legal heir/petitioner within a period of three months from today.”

Evidently, upon regularisation of the suspension period the employee would be entitled to pay and other benefits for this period and in case some amount has already been paid on account of subsistence allowance, obviously that would be subject to appropriate adjustments.

However, delay of 77 days in filing the appeal is condoned for the reasons mentioned in the application.

Appeal stands disposed of.

(MAHESH GROVER)
JUDGE

13.11.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No