

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 572 of 2018

1. The Collector Rajnandgaon And District Mission Director, Rajiv Gandhi Shiksha Mission, Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh
2. The Chief Executive Officer, District Panchayat Rajnandgaon And Ex. Officio, District Mission Director (District Project Director) Rajiv Gandhi Shiksha Mission Rajnandgaon Chhattisgarh.
3. State Of Chhattisgarh, Through The Secretary Department Of School Education Mahanadi Bhawan New Mantralaya, Naya Raipur Chhattisgarh.
4. The Block Education Officer , Rajnandgaon Chhattisgarh. (No. 3 And 4 Are Formal Party , They Have Been Arrayed As Party As Per Order Of The Honble Single Judge)

---- Appellants

Versus

1. Hemant Kumar Joshi S/o Shri Jhumman Lal Joshi, Aged About 51 Years R/o Village Arjunda , District Balod , Chhattisgarh., District : Balod, Chhattisgarh
2. The Chief Executive Officer , District Panchayat Rajnandgaon And Ex. Officio, District Mission Director (District Project Director) Rajiv Gandhi Shiksha Mission Rajnandgaon Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Respondents

For Appellants : Ms. Pushpa Dwivedi, Advocate under the authority of Mr. A.S. Kachhawaha, Additional Advocate General.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Gautam Chourdiya

ORDER

P. Diwaker, J

05/07/2018

1. Heard on I.A. No.1, an application for condoning delay of 50 days in preferring this writ appeal.
2. For the reasons assigned in the application, it is allowed. Delay of 50

days in filing this appeal is condoned.

3. Heard on admission.
4. This writ appeal is preferred by the appellants feeling aggrieved by the direction contained in the order dated 16.3.2018 (Annexure A-1) passed by the learned Single Judge in Writ Petition (S) No.2346/2018 directing payment of subsistence allowance to petitioner/respondent No.1 herein during the period of his suspension.
5. Brief facts of the case are that the petitioner was placed under suspension vide order dated 15.12.2015 (Annexure P-1) as he was arrested by the police in connection with a criminal case registered against him for committing financial irregularities. The petitioner/ respondent No.1 was placed under suspension as a result of his arrest in a criminal case. Petitioner/respondent No.1 herein filed a writ petition seeking for direction to respondents/appellants herein to allow him to join his duties and as the petitioner is under prolonged suspension, which is not permissible under the law, he be paid subsistence allowance. Learned Single Judge vide order dated 16.3.2018 (Annexure A-1) has held that suspension of petitioner/respondent No.1 herein cannot be interfered in view of proviso to Section 9 (1) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966. However, the respondents have been directed to pay subsistence allowance to the petitioner during the suspension period. It is this direction which has been assailed in this writ appeal by the appellants.
6. Learned counsel for the appellants submits that the appellant is not entitled for any subsistence allowance on the ground that appointment of the petitioner/respondent No.1 herein on the post of Accountant is purely on contractual basis, there is no provision of placing such employee under suspension and therefore there is no question of granting subsistence

allowance to the petitioner.

7. We have heard learned counsel for the appellants and perused the impugned order.
8. It is well settled that an employee, who is placed under suspension, cannot be denied subsistence allowance, which amounts to violation of Article 21 of the Constitution of India. The provision of subsistence allowance made is intended to serve a definite purpose of sustaining an employee and his family members during the bad time and when he is under suspension pending enquiry or trial. So long as the petitioner/respondent No.1 is kept under suspension, pending criminal proceedings, the appellants are liable to pay subsistence allowance to the petitioner during the period of suspension.
9. Thus, we do not find any error in the above approach taken by the writ Court in regard to payment of subsistence allowance to the petitioner during the period of his suspension.
10. Accordingly, the writ appeal filed by the appellants being bereft of any substance is liable to be dismissed in limine and is dismissed as such.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(Gautam Chourdiya)
Judge

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11. So far as the ground urged in this appeal that the respondent No.1 being a contractual employee is not entitled to get subsistence allowance is concerned, a perusal of impugned order shows that it was a bi-parte order but no such ground/objection was raised at that point of time and as such, the appellants are debarred from raising such objection at the this stage.