

(104) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.2073 of 2017 (O&M)
in CWP No.25410 of 2013
Date of decision:11.01.2018

State of Haryana and others

.... Appellants

Versus

Krishan Lal

.... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.
HON'BLE MR. JUSTICE B.S. WALIA.

Present: Ms. Tanisha Peshawaria, DAG, Haryana.

B.S. Walia, J.,

[1] Challenge in the intra-court appeal is to order dated 05.05.2017 passed by the learned Single Judge partly allowing the writ petition by setting aside order (Annexure P-35) dated 23.07.2013 and directing the respondents to calculate enhanced subsistence allowance payable to the petitioner on completion of 6 months beyond the date of suspension till 04.9.2013 and to disburse the amount payable within 3 months of the date of order.

[2] Brief facts of the case leading to the filing of the intra-court appeal are that the petitioner challenged order (Annexure P-35) vide which his prayer for enhancement of subsistence allowance beyond suspension period of six months was rejected purportedly in the light of Rule 7.2 of the Punjab Civil Services Rules, Volume-I, Part-I (hereinafter referred to as the Rules) as applicable to the State of Haryana.

[3] Before the learned Writ Court, the stand of the appellants was that the petitioner was deemed to be under suspension on account of his conviction for the commission of offences under Sections 324, 326, 452 read with Section 34 IPC and awarding of sentence of imprisonment of one year and two years, respectively along with fine of ₹ 500/- each vide order of conviction and sentence dated 09.02.2007. In view of upholding of the conviction and sentence in appeal vide order dated 15.07.2008 by the learned Additional Sessions Judge, the petitioner was taken in custody, consequently placed under suspension vide office order dated 15.01.2010 with effect from the date when he was taken into police custody. The department also initiated the process for dismissal of the petitioner from service on account of his conduct which led to conviction but the said proceedings were ordered to be kept in abeyance in view of order dated 13.07.2011, passed by this Court in Criminal Revision No.1440 of 2008. In the circumstances, learned Deputy Advocate General contended that order Annexure P-35 had been correctly passed in accordance with the Rules, therefore, the petitioner was not entitled to enhancement of subsistence allowance. Learned Deputy Advocate General contended that the learned writ Court had without appreciating the controversy in the correct perspective, partly allowed the writ petition and while upholding the order of suspension dated 15.01.2010 with effect from 15.07.2008 directed subsistence allowance payable to be increased from 50% to 75% on expiry of six months from the date of suspension up to 04.09.2013.

[4] The order passed by the learned writ Court has been challenged on the ground that Rule 7.2, Note 1 and 2 of the Punjab Civil Services Rules, Volume-I, Part-I as applicable to the State of Haryana had not been

appreciated in the correct perspective. Rule 7.2 along with Note 1, 2 and 3 reflected that order Annexure P-35 declining subsistence allowance beyond period of six months had been correctly passed keeping in view the conviction of the petitioner in the criminal case. Learned Deputy Advocate General contended that only Rule 7.2 (1) and (2) of the Rules *ibid* had been considered without taking into account Notes to the aforementioned Rules. She further contended that the learned writ Court had failed to take into account that pursuant to the conviction of the petitioner vide order dated 09.02.2007, upholding of the conviction by the learned Addl. Sessions Judge, Fatehabad vide order dated 15.07.2008, petitioner having been taken into custody and show cause notice having been issued to the petitioner for dismissal from service on account of his conduct which led to his conviction, the show cause notice was kept in abeyance solely on account of pendency of Criminal Revision No.1440 of 2008 in which this Court had passed order of stay on 13.07.2011. Learned Deputy Advocate General contended that in the circumstances the competent authority had rightly denied the enhancement of subsistence allowance beyond six months by taking into account conduct of the petitioner which led to his conviction.

[5] A perusal of the impugned order reveals that the learned writ Court while taking into account Rule 7.2 (1) (a) (i) of the Rules held the petitioner entitled to enhanced subsistence allowance on his completing six months from date of suspension but restricted the same till 04.09.2013 i.e. the date on which the official respondents took a decision that the petitioner was not entitled to enhanced subsistence allowance under Rule 7.2 of the Rules. The appellants were directed to calculate the enhanced subsistence allowance with the difference in subsistence allowance paid / payable, from

the date the petitioner completed suspension period of six months till 04.09.2013 to be disbursed within 3 months from the date of order.

6. Relevant part of the Rules is reproduced hereunder :

"7.2(1) A Government employee under suspension shall be entitled to the following payment 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 a 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 other allowances admissible to him, are equal to or less than the amount earned by him nothing in this proviso shall apply to him."

[7] We have considered the submissions made by the learned Deputy Advocate General but are of the view that for the reasons recorded hereunder, there is no merit in the appeal, accordingly, the same must fail.

[8] Admittedly, the petitioner was convicted and sentenced to undergo imprisonment on 09.02.2007 by the learned Sub-Divisional Judicial Magistrate. Appeal against the conviction and sentence was dismissed by the learned Additional Sessions Judge, Fatehabad on 15.07.2008. Pursuant thereto the petitioner was taken in police custody and was placed under suspension vide office order dated 15.01.2010 with effect from 15.07.2008. Show cause notice for dismissing the petitioner from service was also issued but proceedings in respect thereto were kept in abeyance in view of suspension of conviction vide order dated 13.07.2011 by this Court in CRM No.6876 of 2010 in Criminal Revision No.1440 of 2008 (Annexure P3). The Criminal Revision Petition is stated to be pending adjudication even as on date. Relevant extract of the order suspending the conviction of the petitioner is reproduced as under:-

“By filing this application, Krishan Lal – petitioner seeks suspension of his conviction because he is Government

employee and was not sentenced for moral turpitude. In support of the submission, reliance has been placed on (i) Padam Singh v. State of UP, 2000 (1) RCR (Criminal) 138, (ii) K. Bhagyanath v. State, 2003 (1) RCR (Criminal) 145; (iii) Roop Singh v. State of Punjab, 2005 (2) RCR (Criminal) 799; (iv) Ram Singh and others v. State of Haryana, 2007 (3) RCR (Criminal) 2001; (v) Navjot Singh Sidhu v. State of Punjab and another, 2007 (1) RCR (Criminal) 836 and (vi) Balbir Singh v. State of Punjab, 2008 (2) RCR (Criminal) 531.

The revision is not likely to be heard soon. In view of this, conviction of the petitioner (Krishan Lal) is suspended during the pendency of revision.”

[9] Once the conviction itself has been stayed, then the very basis for suspension of the petitioner vanishes in view of the ratio of decision of Hon’ble the Supreme Court in case reported as Ravikant S Patel vs Sarvabhouma S. Bagali-2007(1) SCC 673. Relevant extract of the same is reproduced as under :

“3. The election of the appellant was challenged by the respondent before the Karnataka High Court on the ground that the appellant was not qualified to contest the election. In the Election Petition, the case set up by the respondent was that on the date of filing of nominations and on the date of declaration of the results, the elected candidate was disqualified for being chosen as a member of the Legislative Assembly, in view of Section 8(1)(3)(4) of the Act, as he had been convicted for an

offence punishable under Sections 366 and 376 of the Indian Penal Code and sentenced to imprisonment for more than two years.

11. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. Be that as it may. Insofar as the present case is concerned, an application was filed specifically seeking stay of the order of conviction specifying that consequences if conviction was not stayed, that is, the appellant would incur disqualification to contest the election. The High Court after considering the special reason, granted the order staying the conviction. As the conviction itself is stayed in contrast to a stay of the execution of the sentence, it is not possible to accept the contention of the respondent that the disqualification arising out of conviction continues to operate even after stay of conviction.

18. Reverting to the present case, we are not called upon to decide the correctness of the order of stay of conviction dated 26th March, 2004. All that requires to be noticed is that on the dates of nomination and election, in view of the said order staying conviction, the appellant was not disqualified. The

question whether subsequently the conviction was set aside in appeal or whether the matter is in further challenge before this Court is of no relevance for deciding the point in issue.”

[10] Still further, a perusal of Rule 7.2 (1) (ii) (a) of the Rules reveals that in case suspension exceeds six months, amount of subsistence allowance payable for the period subsequent to the period of first six months is to be increased in accordance with Rule 7.2 (1) (ii) (a) (i) of the Rules for such period of time as the suspension continues beyond six months. In the circumstances, no interference is warranted with the findings of the learned writ Court with regard to grant of enhancement of subsistence allowance to the petitioner after expiry of six months beyond the date of suspension except to the extent that the enhanced subsistence allowance shall be paid in accordance with the Rules as referred to above with effect from expiry of six months beyond the date of suspension till such time that the suspension continues in the absence of any allegation attributable to the petitioner of his causing any delay in the conclusion of the departmental proceedings.

[11]. A Division Bench of this Court in case titled as **Rohtas Singh versus State of Haryana and others 2004(2)RSJ 640** held that in the absence of specific reasons in writing by the Department that the delinquent was responsible for causing delay in conclusion of department proceedings, denial of enhancement of subsistence allowance to 75% in terms of Rule 7.2 of the Rules as applicable to the State of Haryana was not sustainable. Relevant extract of the aforesaid decision as well as various decisions referred to therein are reproduced as under:

4. The cumulative reading of the above rule clearly shows that the expression made in the Rule cannot be read or construed so

as to vest an absolutely arbitrary discretion in the authority concerned. This expression would have to be given a wider meaning so as to place an obligation upon the competent authority to consider the case of an employee for grant of enhanced suspension allowance subject to the satisfaction of the conditions stated in the Rule. Once a delinquent official is found not guilty of causing intentional delay in conclusion of the departmental proceedings, then respondent normally must enhance the subsistence allowance in accordance with the Rule. The competent authority is duly empowered to decline increase by recording in writing the reasons thereof, but where the period of suspension has been prolonged for reasons to be recorded in writing not directly attributable to the Government employee, denial of increase would vest the employee with unfair results.

5. A Division Bench of this Court in the case of ***R.K. Garg v. HUDA, CWP No. 6525 of 2001 decided on 11.7.2002*** expressed the similar view and rejected the contention of the State that employee was not entitled to enhanced rate of suspension allowance. It was observed as under :-

"It is a settled principle of law that note to a substantive provision must be read in harmony with the principal rule so as to further the case and object of the rule under interpretation. The note cannot be read so as to frustrate the very purpose of the rule. Rule 7.2 has been enacted carefully and it stipulates different situation and circumstances under which the increase

or decrease in subsistence allowance after the expiry of period of six months can be directed by the competent authority. The rule clearly postulates that where prolongation of the suspension period is not attributable to the Government employee, normally the employee would be entitled to enhancement of the subsistence allowance by an extent which the authority may consider just and proper in consonance with the rule. The language of Note (3) is suggestive that it explains what the authority is required to do for implementation of the rule. It is obligatory under this rule that an authority should review the situation in sufficient time before the expiry of the first six months of suspension period. The authority has to apply its mind and give regard to all the circumstances of the case for taking a decision under the rule. Therefore, the rule is subservient to the rule and cannot alter the nature and content of the rights and restrictions laid down under the principal rule.

A Division Bench of this Court in the case of ***Gujraj Singh, B.D. & P.O. v. State of Haryana and others, 1986(3) S.L.R. 35*** under somewhat similar circumstances, where the prolongation of suspension period, the criminal case was not for the reasons directly attributable to the employee, held as under :-

"As regards the claim of the petitioner for increase by 50% of the subsistence allowance admissible to him after the expiry of the period of first six months of his suspension there is again no valid reason for not granting the same to him. All that has been

contended in the Written Statement is that the criminal case against the petitioner is pending in the Court of Additional Chief Judicial Magistrate, Jind, and, therefore, he is not entitled to any increase in the subsistence allowance as claimed by him. Proviso (1) to rule 7.2(1) *ibid* lays down that the increase in the subsistence allowance for the period of suspension beyond six months is to be granted to a Government servant if the period of suspension has not been prolonged for reasons directly attributable to him. There is no averment in the Written Statement that criminal proceedings against the petitioner have been prolonged on any ground for which he is directly responsible."

Still in another case titled as *Mulkh Raj Chhabra v. The Secretary to Govt. of Punjab, Health & Family, 1992(3) SCT 251 (P&H)* similar view was taken and the petitioner was granted the relief.

The order under challenge gives no reasons whatsoever for declining the relief to the petitioner. Even in the written statement, there is no averment that the petitioner is directly or even indirectly responsible for prolongation of the criminal proceedings and consequently the period of suspension. The order at the face of it is a non-speaking one. The competent authority can take into consideration all the facts and circumstances of the case, but not to the exclusion of the ingredients specified in the rule itself. The competent authority

has not even made a reference in the impugned order in relation to the essential features referred under Rule 7.2."

6. Applying the above principles to the facts and circumstances of the present case, it is clear that no reasons, whatsoever, have been recorded by the competent authority and in fact it has not even been impliedly suggested in the impugned order that the delinquent was responsible for causing any delay in the conclusion of the departmental proceedings. In absence of such specific reason in writing by the respondents, it is not possible for this Court to sustain the impugned order. The order, thus, must be set aside the respondent are liable to be directed to consider the case of the petitioner and grant him and enhanced suspension allowance in accordance with the Rules. Consequently, this writ petition is allowed. The impugned order Annexure P/3 dated 20.3.2003 is set aside. The petitioner shall be granted the enhanced suspension allowance in accordance with the Rules. We leave the parties to bear their own costs."

[12] There is no allegation that the petitioner was responsible for causing delay in the conclusion of the departmental proceedings. Accordingly, finding no merit in the appeal, the same for the reasons as are noted above is dismissed in *limine*.

The appeal is accompanied with an application seeking condonation of 131 days' delay in late filing of the appeal.

A perusal of the application reveals that order dated 05.05.2017 passed by the learned Single Judge was downloaded from the website of this

Court on 25.05.2017 whereafter the matter remained in correspondence with the office of the Advocate General, Haryana who opined it to be a fit case for filing of LPA in the first week of August 2017. Office of the Advocate General, Haryana sent intimation to the appellants for filing of appeal vide memo dated 11.08.2017. Thereafter, the matter was marked to the Law Officer on 05.09.2017 for drafting of grounds of appeal. The appeal was drafted and was filed on 22.09.2017. In this process, a delay of 131 days occurred. The facts as noted above do not reveal any urgency in filing the appeal.

Keeping in view the facts as set out in the application, we do not find sufficient ground for not filing of the appeal within the stipulated period of time.

Accordingly, the application seeking condonation of delay of 131 days in late filing of the appeal is also dismissed.

(Rajesh Bindal)
Judge

(B.S. Walia)
Judge

11.01.2018
amit

Note:-

1. Whether the order is speaking/reasoned: Yes/No.
2. Whether the order is reportable: Yes/No.