

WPA 8432 of 2020

**Kalika Pathak
Vs.
Union of India & Ors.**

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Mr. Achin Kumar Majumdar
Mr. Pratik Majumdar
... For the Petitioner

Mr. Pathik Bandhu Banerjee
... For the Respondents

The petitioner is a member of the Railway Protection Force. His service was dismissed. By an order passed by the Hon'ble Division Bench of this Court on 25th June, 2019 in CAN 4454 of 2019 in MAT 587 of 2019 his order of dismissal from service was directed to remain stayed until further orders. The Hon'ble Division Bench recorded that the appellant shall be deemed to be placed under suspension from 10th June, 2019 and entitled to subsistence allowance as per the prevalent rules treating him not to have been dismissed for the time being, till such time this appeal is disposed of.

Learned advocate appearing for the petitioner submits that the appeal is pending for consideration and yet to be disposed of by this Court.

Learned advocate for the petitioner further submits that in terms of the order passed by the Hon'ble Division Bench the respondents were paying his subsistence allowance from the date of dismissal till August 2020. By a letter dated 8th September, 2020 his subsistence allowance was stopped and a show-cause notice was given to him for explaining as to why disciplinary

action shall not be taken against him for violation of Rule 143.2 of RPF Rules, 1987.

The petitioner by a letter dated 9th September, 2020 replied to the show-cause. The petitioner relied upon a judgment delivered by this Court in the matter of **Suresh Chaudhury Vs. Union of India & Ors., reported in 2003(2) SLR 426**, wherein this Court was pleased to strike down the provision of Rule 143.2 and held it to be ultra vires.

The Divisional Security Commissioner /RPF by a communication dated 22nd December, 2020 rejected the cause shown by the petitioner holding it to be not tenable. The said officer was also of the opinion that the petitioner interpreted the order of the Division Bench, which was passed in his case and he intentionally disobeyed the order of the competent authority, which was passed in accordance with the relevant rules.

The petitioner submits that as Rule 143.2 of RPF Rules, 1987 has already been struck down by this Court, the petitioner is not required to give his attendance as per the said rule.

The learned advocate representing the respondents relies upon Rule 143.2 of RPF Rules, 1987 and submits that according to the said rules he is required to stay in the headquarter and give his attendance before the nominated authority.

He further relies upon the order passed by the Hon'ble Division Bench on 25th June, 2019 wherein the Court directed that the petitioner shall be entitled to subsistence allowance as per the prevalent rules.

I have heard the submissions of both the parties.

On perusal of the judgment relied upon by the petitioner in the matter of Suresh Chaudhury (supra) it appears that the Court dealt with the matter in details and the Court categorically held that the impugned order of suspension placing reliance upon Rule 143.2 is illegal.

The Court struck down Rule 143.2 by holding it to be ultra vires. The Court opined that a suspended employee is not required to work as directed by the employer and he is not on duty. There cannot be any conceivable reason to keep him confined within the limits of jurisdiction of the headquarters and to limit his freedom of movements. The power of the authority confronts the provision of Article 19(1)(b) of the Constitution of India. The Court relied upon a judgment delivered in the case of N.N. Bhattacharjee Vs. Government of West Bengal, reported in 1962(1) LLJ 317 at the time of passing judgment in the case of Suresh Chaudhury (supra).

The order passed by the Hon'ble Division Bench on 25th June, 2019 specifically mentioned that the petitioner shall be entitled to subsistence allowance as per the prevalent rules.

In my opinion "prevalent rules" means the rules which are in force and certainly not the rules which have been struck down by the Court as ultra vires.

The Rule which has been struck by a Court of Law cannot be made enforceable and relied upon by the respondents to impose punishment upon the petitioner.

In view of the above, the impugned order dated 22nd September, 2020 is liable to be set aside and is accordingly set aside.

The respondents are directed to immediately

release the subsistence allowance of the petitioner strictly in accordance with the order dated 25th June, 2020 passed by the Hon'ble Division Bench in the appeal preferred by the petitioner. All arrear payments of the petitioner shall be released within a fortnight from date.

WPA 8432 of 2020 is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

(Amrita Sinha, J.)