

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 2560 of 2013**

Jaideep Das, S/o Late Shri Barun Kumar Das, 49 years, Manager (F&A) (Under Suspension) NTPC Korba Chhattisgarh R/o Flat No. 3B-Sukriti, 6A Deshopriya Park East, Post and P.S. Deshopriya Park, Kolkata 700029.

---Petitioner

Versus

1. National Thermal Power Corporation Ltd., through the Chairman Cum Managing Director, NTPC Bhawan, Scope Complex, Core 6/7 Lodhi Road, Post and P.S. Lodhi Road, New Delhi 110003.
2. The General Manager, National Thermal Power Corporation Ltd., Korba Super Power Thermal Station, Post Vikas Bhawan, P.S. Jamnipali, Korba 495450, Civil and Revenue Distt. Korba, Chhattisgarh.
3. The Director (Comml.) & Executive Director (W.R.) National Thermal Power Corporation Ltd., Korba Super Power Thermal Station, Post Vikas Bhawan, P.S. Jamnipali, Korba 495450, Civil and Revenue Distt. Korba, Chhattisgarh.

---Respondents

For Petitioner :- Mr. Harshal Chouhan, Advocate

For Respondents :- Mr. B.D. Guru, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

24/09/2021

“The payment of subsistence allowance, in accordance with the Rules, to an employee under suspension is not a bounty. It is a right. An employee is entitled to be paid the subsistence allowance.”

1. The aforesaid principle of law laid down by Their Lordships of the Supreme Court in the matter of **Jagdamba Prasad Shukla v. State of U.P. and Others**¹ squarely and factually applies to the facts of the instant case. In this case also, though the petitioner is entitled for subsistence allowance, yet he has been declined the payment of subsistence allowance on totally non-justifiable grounds.
2. Petitioner herein, who was working under the respondent NTPC on the post of Manager (Finance), was placed under suspension by order dated 21/04/1999 (Annexure P/1) on account of certain financial irregularities in terms of NTPC Conduct, Discipline and Appeal Rules, 1977. It is the case of the petitioner that as per Rule 21 of the Rules of 1977, he was entitled for subsistence allowance while he was placed under suspension, but he has not been paid a single penny though he has made representations in this regard on 07/09/2011 and 13/10/2011 , as such, appropriate direction be

¹ (2000) 7 SCC 90

issued to the respondents for payment of subsistence allowance to the petitioner from the date of suspension i.e. 21/04/1999 along with an interest of 18 % p.a. as damages for illegally withholding the amount of subsistence allowance for which petitioner is entitled.

3. Respondents have filed their return stating that petitioner has rightly been declined the payment of subsistence allowance as he has not fulfilled condition No. 5 of his suspension order and he has not filed any written declaration that he is not engaged in other employment or business or profession or vocation. It has further been stated that an FIR was registered against the petitioner and he was absconded for a fairly long time, therefore, he is not entitled for subsistence allowance.
4. It is also stated at the Bar that petitioner was arrested on 26/02/2011 during the period of his suspension and he was released on bail on 23/08/2011. Thereafter, he has been convicted on the criminal charges leveled against him on 11/09/2017 and he is in custody at present.
5. Mr. Harshal Chouhan, learned counsel for the petitioner, would submit that though the petitioner has been suspended, yet he is entitled for

subsistence allowance in terms of Rule 21 of the Rules of 1977 which has not been paid to him despite making representations for payment of subsistence allowance, which is absolutely illegal and without jurisdiction and without authority of law. He would rely upon the decision rendered by the Supreme Court in the matter of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. And Another² to buttress his submission.

6. Mr. B.D. Guru, learned counsel for the respondents, would support the impugned order and submit that considering the non-fulfillment of conditions prescribed in the order of suspension dated 21/04/1999 (Annexure P/1) and since the petitioner was subsequently found involved in a criminal offence, subsistence allowance has rightly not been paid to the petitioner, as such, the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.

8. True it is that petitioner was placed under suspension by order dated 21/04/1999 (Annexure P/1) on account of certain allegations amounting to serious misconduct under the Rules of 1977.

² (1999) 3 SCC 679

Conditions No. 3 and 5 of the order of suspension dated 21/04/1999 are reproduced herein-below for the sake of convenience :-

ORDER OF SUSPENSION PENDING ENQUIRY

Shri Jaideep Das,
Emp. No. 01910,
Manager (F&A),
NTPC, Korba.

1. XXX XXX

2. XXX XXX

3. During the period of your suspension, you shall not enter the Work Premises except with the permission of the Competent Authority.

4. XXX XXX

5. During the period of your suspension, you will be entitled to draw Subsistence Allowance as admissible under the rules. The payment of the Subsistence Allowance, however, will be subject to a written declaration by you that you are not engaged in other employment or business or profession or vocation as well as your observance of instructions/advice contained made from time to time.

9. A careful perusal of the order of suspension (Annexure P/1) would show that petitioner was restrained from entering into the NTPC premises and he was allowed to do so only with the leave of the competent authority and the payment of subsistence allowance was made subject to written declaration by the petitioner that he is not engaged in other employment or business or profession or vocation.

10. At this stage, it would be appropriate to notice Rule 21 of NTPC Conduct, Discipline and Appeal

Rules, 1977, which govern the suspension of NTPC employees :-

"21. Subsistence Allowance

(1) An employee under suspension shall be entitled to draw subsistence allowance equal to 50 percent of his basic pay provided that disciplinary authority is satisfied that the employee is not engaged in any other employment or business or profession or vocation. In addition, he shall be entitled to Dearness Allowance admissible on such subsistence allowance and any other compensatory allowance of which he was in receipt on the date of suspension provided the suspending authority is satisfied that the employee continues to meet the expenditure for which the allowance was granted.

(2) 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 to 75 percent of basic pay and allowance thereon 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 employee under suspension.

(ii) The amount of subsistence allowance may be reduced to 25 percent of basic pay and allowances thereon if in the opinion of the said authority, the period of suspension has been prolonged due to the reasons to be recorded in writing, directly attributable to the employee under suspension.

3. If an employee is arrested by the Police on a criminal charge and bail is not granted, no subsistence allowance is payable. On grant of bail, if the competent authority decides to continue the suspension, the employee shall be entitled to subsistence allowance from the date he is granted bail."

11. As such, from a careful perusal of Rule 21 of the Rules of 1977, an employee is entitled for subsistence allowance during the period of suspension subject to the conditions mentioned in sub-rule (1) of Rule 21. He is not entitled for payment of subsistence allowance if he is arrested, but on the grant of bail, he would be entitled from the date on which bail has been granted to him.

12. In the instant case, it is the case of the petitioner that he has not been granted a single penny as subsistence allowance since the date of suspension i.e. 21/04/1999 for which he has also made representations on 07/09/2011 and 13/10/2011 (Annexure P/3). In the representation dated 13/10/2011, the petitioner has clearly mentioned that he is not engaged in any other employment or business or profession or vocation. However, Mr. B.D. Guru, learned counsel for the respondents, would contend that since petitioner has not complied with condition No. 5 of the order of suspension (Annexure P/1) and he has not given written declaration, therefore, he has not been extended the benefit of subsistence allowance.

13. True it is that Rule 21(1) of the Rules of 1977 as well condition No. 5 prescribed in the order of suspension, both provide that grant of subsistence

allowance is subject to declaration that the suspended employee is not engaged in other employment or business or profession or vocation, but NTPC, being a model employer ought to have sought necessary declaration from the petitioner that he is employed anywhere or not after his suspension, but nothing has been brought on record that any affidavit or information was sought from the petitioner. Though in the representations filed by the petitioner on 07/09/2011 and 13/10/2011, he has clearly stated that he is not engaged in any other employment or business or profession or vocation, yet the respondent NTPC did not even consider petitioner's representations and did not extend the benefit of payment of subsistence allowance to the petitioner. Moreover, it is not even the case of the respondents that petitioner was engaged in any other employment, business, profession or vocation which disentitles him for grant of subsistence allowance.

14. It is well-settled law that payment of subsistence allowance is also to be considered as a fundamental right guaranteed by Article 21 of the Constitution of India as it encompasses that the employee suspended pending inquiry should survive to maintain his family and also to effectively participate in the disciplinary proceedings. Unless

subsistence allowance is paid, the employee would be deprived of his valuable right to effectively defend the disciplinary inquiry.

15. The Supreme Court in the matter of Capt. M. Paul Anthony (supra), while considering the payment of subsistence allowance in a case of Government servant, had in fact, observed that an act of non-payment of subsistence allowance could be linked to slow poisoning and if the employee is not permitted to sustain himself on account of non-payment of subsistence allowance, he would gradually starve to death. Further, in the matter of Jagdamba Prasad Shukla (supra), the Supreme Court has held that payment of subsistence allowance is a matter of right and not a bounty. Even otherwise, the underlying principle for making payment of subsistence allowance is to allow an individual to sustain himself.

16. Reverting to the facts of the present case in light of the aforesaid principle of law laid by their Lordships of the Supreme Court, it is quite vivid that non-payment subsistence allowance by the respondents to the petitioner is not based on justifiable grounds. Even if the petitioner has not complied with the terms of the order of suspension by not filing a written declaration that he is not

engaged in other employment, business, profession or vocation, the respondents could have asked the petitioner to submit the aforesaid undertaking. Even otherwise, in the representation as stated above, it has been clearly mentioned by the petitioner that he was not engaged in any other employment elsewhere during the period of suspension. Not only this, the petitioner was arrested on 26/02/2011 and he was released on bail on 23/08/2011 as has been stated at the Bar, as such, in accordance with Rule 21(3) of the Rules of 1977, the respondents could have considered the question of grant of subsistence allowance to the petitioner after he was released on bail, but no such order has been brought on record that in terms of Rule 21(3) of the Rules of 1977, the question of payment of subsistence allowance to the petitioner was considered after petitioner was arrested on account of criminal charges leveled against him and after he was released on bail. As such, it is quite evident that respondents have not considered the said issue of payment of subsistence allowance at all on the ground that petitioner is a party to the loss caused to the respondents for which he has been arrested subsequently and thereafter, he was released on bail and he has been convicted also. Despite that, petitioner was entitled for

subsistence allowance from the date of suspension till his arrest and thereafter, from the date on which he was released on bail in accordance with Rule 21(3) of the Rules of 1977.

17. In the considered opinion of this Court, the inaction of the respondents in not granting subsistence allowance to the petitioner is totally arbitrary and unfair as well as inhuman also. Petitioner is entitled for subsistence allowance in accordance with Rules 21(1) and 21(3) of the Rules of 1977 subject to compliance of condition No. 5 of the order of suspension. He will file an affidavit / representation/undertaking for grant of subsistence allowance before the respondents within 30 days along with a copy of this order which will be granted in accordance with Rule 21(1) and 21(3) of the Rules of 1977 within a period of 45 days from the date of filing of the affidavit /representation /undertaking by the petitioner. Petitioner will also be entitled for a cost of Rs. 5,000/-. The respondents will be entitled for interest at the rate of 9% from the date of entitlement till the date of payment.

18. It is stated at the bar that petitioner is still in jail, therefore, direction be issued to the concerned jail authorities to permit the petitioner

to file an undertaking/affidavit from jail. If such a request is made to the jail authorities, the petitioner will be permitted to do so.

19. Accordingly, this writ petition is allowed to the extent indicated herein-above. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet