

\$~3 (2021)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decision delivered on: 04.08.2021*

+ **LPA 79/2021 & CM No. 7457/2021**

DR. MAHABIR PRASAD YADAV Appellant
Through: Mr. Joby P. Varghese, Adv.

versus

LAKSHMIBAI COLLEGE Respondent
Through: Ms. Beenashaw N. Soni, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J. (ORAL):

[Court hearing convened via video-conferencing on account of COVID-19]

1. On the previous date *i.e.* 13.07.2021, we, broadly, captured the controversy raised in the present appeal by the appellant; the said order reads as follows: -

"1. Via this appeal, challenge is laid to the judgement of the Learned Single Judge dated 27.07.2020, passed in Writ Petition No. 13811/2019, and the order dated 07.12.2020, passed in the review petition.

2. Principally, the appellant's grievance veers around the direction issued by the learned Single Judge which envisages that the increase in subsistence allowance from 50% to 75%, will apply prospectively.

3. According to the appellant, as per Fundamental Rule (in short "FR") 53, which the Learned Single Judge has applied, for allowing increase in the subsistence allowance, stipulates that increase in subsistence allowance would kick in after the

expiry of 90 days from the date of his suspension unless delay in the conclusion of disciplinary and/or criminal proceedings is attributable to the employee.

4. It is not in dispute that the appellant was put under suspension on 11.12.2017.

5. According to Mr. Joby P. Varghese, who appears on behalf of the appellant, although under FR 53, the increased subsistence allowance should be payable to the appellant from March 2018, the appellant is willing to accept (which is the worst-case scenario), enhanced subsistence allowance from August 2018, when he was bailed out.

6. Ms. Beenashaw Soni, who appears on behalf of the respondent, says that since the governing body has held its meeting wherein this issue has been discussed, she would revert with necessary instructions qua the same on the next date of hearing.

7. List for further directions on 04.08.2021”.

2. It would be evident from a bare perusal of paragraph 4 and 5 of the order dated 13.07.2021, that the appellant was placed under suspension on 11.12.2017.

3. It is not disputed by Mr. Joby Varghese, counsel for the appellant, that the appellant was in custody, and was bailed out only on 01.08.2018.

3.1. We may note that, Ms. Beenashaw Soni, who appears for the respondent-college, informs us that the said respondent received intimation concerning the petitioner's release via a letter received on 08.08.2018, whereby he informed not only about his release on bail but also showed interest in joining his duties.

4. This apart, Ms. Soni has also returned with instructions. Ms Soni informs us that the respondent college is willing to release the balance 25% of the subsistence allowance, for the period spanning between August 2018 and 27.07.2020.

4.1. Ms. Soni says that, the decision, in this regard, was taken by the governing body of the respondent-college, and a resolution to that effect was passed on 20.04.2021.

5. We are of the opinion, in view of the decision taken by the governing body of the respondent-college, the grievance of the appellant has been largely addressed. The respondent college is, accordingly, directed to pay the balance 25% of the subsistence allowance qua the period in issue *i.e.* August 2018 and 27.07.2020.

5.1. The balance amount will be remitted to the appellant, at the earliest, though not later than 3 weeks from today.

6. We have also considered the submission of Mr. Varghese qua the grant of interest on the balance amount.

6.1. Having regard to the overall facts and circumstances obtaining in the case, we are not inclined to accede to the request made by Mr. Varghese for grant of interest; de hors the fact that no such plea was made on the previous date.

6.2. We do not wish to comment on the conduct of the appellant, as it may impact the disciplinary proceedings, which are pending against him.

7. Given the aforesaid position, no further orders are called for.

8. The appeal and the pending application are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TALWANT SINGH, J

AUGUST 04, 2021/nk

[Click here to check corrigendum, if any](#)