

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CWP-1539-2017

Reserved on 12.10.2022

Pronounced on: *04*.11.2022

Jagdish Singh

.... Petitioner

Versus

Director General of Police, Punjab, Sector-9, Chandigarh, and another.

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ranjit Singh Kalra, Advocate,
for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

JAISHREE THAKUR.J

1. The instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to pay the subsistence allowance for the suspension period of the petitioner as per order dated 21.06.2016, Annexure P-2, however, the same has not been released.

2. In brief, the facts are that the petitioner was appointed as a Constable in Punjab Police. He went on leave on 26.04.2016 for a period of 30 days and was to report back on duty, but he did not present himself on 25.05.2016. Earlier an FIR No.11, dated 17.10.2013 had been registered against him under Sections 7, 13 (2) of Prevention of Corruption Act, 1988, wherein he was convicted and ordered to be sent for imprisonment for 4 years by the Additional Sessions Judge, Kapurthala vide judgement dated

19.05.2016. On account of his arrest, he was unable to join duty on the 25.05.2016. An appeal was preferred bearing No.CRA-S-2179-SB-2016 and the sentence of the petitioner was suspended vide order dated 09.08.2016. As the petitioner who had gone on leave did not report back on the day so appointed, vide order dated 21.06.2016, he was suspended w.e.f. 26.05.2016 and it was directed that he would be entitled to get half of his salary for the first six months or half of his salary equivalent to being on leave and the departmental inquiry initiated was to be concluded within a period of three months. The petitioner was dismissed from service vide order dated 30.03.2017. While dismissing the petitioner from service, the Senior Superintendent of Police, Kapurthala held that the petitioner would not be entitled to subsistence allowance for the period he remained under suspension. It was noted that he had remained lodged in Sub Jail, Phagwara from 18.10.2013 to 01.11.2013 and this period is included in the period ordered as without duty. The appeal filed was dismissed by the Deputy Inspector General of Police, Jalandhar Range by order dated 10.07.2017. The impugned order was then challenged before the Inspector General of Police Jalandhar Range who dismissed the same by order dated 19.08.2017. An appeal against the order dated 19.08.2017 was filed before the Director General of Police, Punjab, who in turn dismissed the appeal of the petitioner vide order dated 06.02.2018. These orders have become final. Since the petitioner was not paid subsistence allowance, legal notice was sent claiming the same and as it has not been released, the instant writ petition has been filed.

3. The entire controversy rests on the question whether the petitioner, who was under suspension pending departmental inquiry and subsequently dismissed, would be entitled to subsistence allowance?

4. The Punjab Civil Service Rules, as applicable to the issue, are reproduced as under:-

"7.2 (1) A Government servant under suspension shall be entitled to the following payments, 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 the case of any other Government servant--

(a) a subsistence allowance at an amount equal to the leave salary which the Government servant would have drawn if he had been on leave on half average pay or 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 twelve 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 twelve 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 twelve 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 servant;

(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 twelve

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 servant.

(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 allowance admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension:

Provided that the Government servant shall not be entitled to the compensatory allowances unless the said authority is satisfied that the Government servant continues to meet the expenditure for which they are granted.

(2) No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

Provided that in the case of a Government servant 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 and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him."

5. The expression 'subsistence allowance' has been defined by the Hon'ble Supreme Court in ***O.P. Gupta Versus Union of India, 1987 (4) SCC 340:-***

*"An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension as explained by this Court in ***Khem Chand Versus Union of India*** is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance - generally called subsistence allowance - Which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a Government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol. II at page 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means - means of supporting life, especially a minimum livelihood."*

6. Subsistence allowance is not a largess as handed out by the State, but a statutory right as provided for under the Rules. Denial of subsistence allowance amounts to gross violation of the statutory and

Constitutional right of an employee. Rule 7.2(1)(ii)(a) of the Rules declares that a Government employee, under suspension, shall be entitled to an amount equivalent to leave salary which the Government servant 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. Where period of suspension exceeds six months then various eventualities have been discussed in the proviso appended to Rule 7.2 (1)(ii)(a). As per clause (i) of the proviso, the amount of subsistence allowance could be increased by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of first six months, if in the opinion of the competent authority the period of suspension has not prolonged for the reasons directly attributable to the Government employee. In other words, if the suspension period of the Government employee is to exceed beyond six months for the reasons which are not attributable to him, then the amount of subsistence allowance could be increased maximum to 50 per cent of the amount already received by him as subsistence allowance. It is further provided that the employee is to furnish a certificate to the effect that he is not gainfully employed during that particular period.

7. In the present case, the impugned order dated 30.07.2017 contains no cogent reason given as to why the subsistence allowance would not be released, despite the fact that the order dated 21.06.2016 suspending the petitioner allowed for the same. In view of the rules, the petitioner is held entitled to the release of the subsistence allowance. He was suspended on 21.06.2016 and dismissed from service on 30.03.2017, therefore, he would be allowed subsistence allowance in terms of Rule 7.2 of the Punjab Civil

Service Rules for the period in question subject to furnishing a certificate that he was not gainfully engaged in any other employment, business, profession or vocation.

8. Writ petition stands allowed in the above terms.

(JAISHREE THAKUR)
JUDGE

04.11.2022

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Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No